

DEPARTMENT OF THE NAVY BOARD FOR CORRECTION OF NAVAL RECORDS 701 S. COURTHOUSE ROAD, SUITE 1001 ARLINGTON, VA 22204-2490

> Docket No. 3581-22 Ref: Signature Date



Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to Section 1552 of Title 10, United States Code. After careful and conscientious consideration of relevant portions of your naval record and your application, the Board for Correction of Naval Records (Board) found the evidence submitted insufficient to establish the existence of probable material error or injustice. Consequently, your application has been denied.

Although your application was not filed in a timely manner, the Board found it in the interest of justice to waive the statute of limitations and consider your case on its merits. A three-member panel of the Board, sitting in executive session, considered your application on 11 July 2022. The names and votes of the members of the panel will be furnished upon request. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, relevant portions of your naval record and applicable statutes, regulations, and policies.

A review of your record shows that you enlisted in the Marine Corps and commenced a period of active duty on 26 January 1999. On 3 December 2007, you were approved for discharge with a 10% disability finding, with severance pay. Thereafter, on 15 February 2008, you were discharged with severance pay. In your petition, you requested that the reason for your discharge be changed to a medical discharge with a transfer to the permanent disability retired list. In support of your petition, you contend that after your separation, you were eventually rated at 100% service connected disabled by the U.S. Department of Veterans' Affairs (VA). You provided copies of documentation from the VA in support of your petition.

The Board carefully considered your arguments, including the entirety of your petition and all of its enclosures, and it disagreed with your rationale for relief. The Board also reviewed your service and medical records. In order to qualify for military disability benefits through the Disability Evaluation System with a finding of unfitness, a service member must be unable to perform the duties of their office, grade, rank or rating as a result of a qualifying disability condition. In denying your request for a disability retirement, the Board observed that there was no evidence that the 10% disability finding, assigned while you were in service, was issued in

error. In reaching its conclusion, the Board also determined that the presumption of regularity applied to the process employed with respect to you physical condition at your time of service. You did not provide any documentation that was contemporaneous to your time in service demonstrating that there was any error in the Physical Evaluation Board's assessment of your condition during your time in service. In addition, the Board noted you did not provide any medical records. Further, to the extent you assert that the VA's later findings relating to your service connected disabilities provide evidence of your unfitness during service, the Board noted that such findings from the VA for service connected disability conditions did not persuade the Board these conditions were unfitting at the time of your discharge from the Marine Corps since eligibility for compensation and pension disability ratings by the VA is tied to the establishment of service connection and is manifestation-based without a requirement that unfitness for military duty be demonstrates the effective date of the majority of your service connected ratings were well after your discharge from the Marine Corps. In light of all of the foregoing, the Board did not find an error or injustice in your naval record, and it denied your requested relief.

You are entitled to have the Board reconsider its decision upon submission of new matters, which will require you to complete and submit a new DD Form 149. New matters are those not previously presented to or considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.



Sincerely,