



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

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Docket No. 3854-22
Ref: Signature Date

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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 application on its merits. A three-member panel of the Board, sitting in executive session, considered your application on 31 October 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.

The Board determined that a personal appearance with or without counsel would not materially add to their understanding of the issues involved. Therefore, the Board determined that a personal appearance was not necessary and considered your case based on the evidence of record.

A review of your record shows that you enlisted in the Marine Corps and commenced a period of active duty on 10 March 1978. During your enlistment, you received nonjudicial punishment on three occasions for violations of Article 86, Uniform Code of Military Justice, due to unauthorized absence, for periods of 29 days, 5 days, and 21 days. On 4 April 1980, you received a psychiatric re-evaluation. According to the re-evaluation, you were recently released from confinement, and you had a pattern of wanting to get out of the Marine Corps, such that you would continue to absent yourself until you received a discharge. According to the re-evaluation, there was "no evidence of psychosis, organic brain syndrome or disabling neurosis. Problems are attitudinal and characterological. No potential for honorable service in USMC. Non rehabilitative for military service." Thereafter, on 29 April 1980, you were notified of the initiation of administrative separation processing and your rights in connection therewith. On 13

May 1980, the separation authority directed that you be discharged with a general (under honorable conditions) characterization of service. On 19 May 1980, you were so discharged.

In 2016, you filed a petition with this Board seeking to have your discharge upgraded, asserting that you suffered post-traumatic stress disorder (PTSD) during your active service. On 19 December 2016, this Board wrote to you explaining it did not have sufficient medical evidence to render an opinion on your alleged PTSD. Thereafter, the Board reviewed your petition and denied your request by letter dated 24 August 2017, reasoning that you did not provide evidence of PTSD.

In your current petition, you seek to have your discharge changed to medical as a result of an accident that resulted in the fracturing of your jaw, eye socket, and skull. In support of your request, you contend that, had you not had your head injury, you would have succeeded in your service. In further support, you have provided medical documentation as well as documentation from the U.S. Department of Veterans Affairs (VA), demonstrating that you have a 100% service connected disability rating.

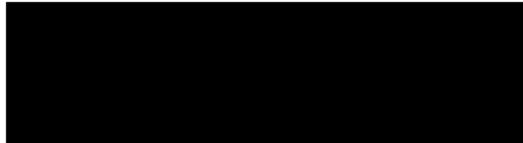
The Board carefully reviewed all of your contentions and the material that you submitted in support of your petition, including the medical documentation that you provided, and the Board disagreed with your rationale for relief. In reaching its decision, the Board observed that, in order to qualify for 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. Alternatively, a member may be found unfit if their disability represents a decided medical risk to the health or the member or to the welfare or safety of other members; the member's disability imposes unreasonable requirements on the military to maintain or protect the member; or the member possesses two or more disability conditions which have an overall effect of causing unfitness even though, standing alone, are not separately unfitting.

In reviewing your record, the Board concluded the preponderance of the evidence does not support a finding that you met the criteria for unfitness at the time of your discharge. To the contrary, the contemporaneous medical documentation reveals that you were discharged due to attitudinal and characterological problems. The medical evaluation specifically found that there was "no evidence of psychosis, organic brain syndrome or disabling neurosis." In its review of your documentation, the Board did not observe that you were diagnosed with any conditions that were deemed unfitting as that term is used in the disability evaluation system. Nor did the Board observe any referrals to the disability evaluation system in your records. Further, with respect to the material that you provided relating to findings by the VA, the fact that the VA rated you for a disability condition that it determined were service connected to your time in the service 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 demonstrated. In light of all of the foregoing, the Board determined there was no error or injustice in your naval record and it denied your petition.

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,

11/17/2022



Deputy Director

Signed by: 