



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

■  
Docket No. 4211-22  
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 case on its merits. A three-member panel of the Board, sitting in executive session, considered your application on 15 August 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 13 June 1994. On 17 October 1994, you were notified of the Physical Evaluation Board decision, which found you unfit due to a hip impingement with a 10% rating. On 1 December 1994, in accordance with the PEB's finding that you were physically unfit for service, you were discharged due to physical disability. In compliance with the governing regulations, based on your short period of service you were not paid severance and assigned an uncharacterized character of service. In 1998, you filed an application with the Naval Discharge Review Board (NDRB) in 1998. On 15 March 1999, the NDRB found no error in your discharge. On 19 March 2003, the U.S. Department of Veterans' Affairs (VA) found that you had a service connected disability for residuals of a stress fracture but found your rating to be 0%.

In your petition, you seek the award of a disability retirement. In support of your request, you contend that you were injured within the first few days of recruit training, before the stress fracture developed in your left femur, but you did not report it out of fear of being ostracized and labeled as a “baby.” You describe this injury as occurring when you hopped down from the top bunk, slipped, and fell hard on your left hip, which caused severe bruising, which you hid from your drill instructors.

In review of the entirety of your naval service record, and your petition and its enclosures, the Board disagreed with your rationale for relief. In considering your current petition, the Board observed that there is no evidence in your record, nor was any provided by you, demonstrating the PEB failed to appropriately assess your medical condition while you were on active duty. Thus, after considering your arguments, the Board determined that none of your arguments were sufficient to overcome the findings of the PEB in your case.

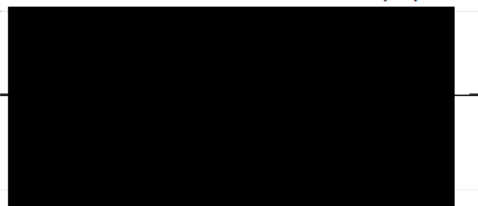
In addition, the Board also noted that, post-discharge, the VA found that you had a 0% service connected disability. Generally, post-discharge findings by the VA do not necessarily demonstrate that certain conditions would be unfitting at the time of your discharge from the Marine Corps. However, the Board noted that, in your case, your disability rating was actually found in 2003 to have been reduced from 10% finding by the PEB at your time of discharge to a 0% finding by the VA post discharge. The Board observed that this provided additional evidence that there was no error or injustice in the PEB findings during your active duty service. Ultimately, the Board concluded that there was no error or injustice relating to the findings of your fitness and your discharge.

Further, the Board found no basis in error or injustice to change your assigned character of service. The Board noted you were discharged within the first 180 days of your active duty start date and were appropriately assigned an uncharacterized discharge based on applicable regulations. While the Board considered your arguments that your time spent in the Delayed Entry Program (DEP) should count toward your characterization of service, they found no regulation or policy that allows for the consideration of DEP time when assigning a characterization of service. Accordingly, given the totality of the circumstances, the Board determined that your request does not merit 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,

8/30/2022

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