



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. 4212-22
Ref: Signature Date

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Dear █

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 23 February 2023. 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 your 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 27 April 2009. During your service, you received concussions in separate incidents that occurred during deployments in each 2010 and 2011. According to your official military personnel file (OMPF), your first concussion was described as grade 2 and your second was described as a concussion without loss of consciousness. You received medical treatment for these concussions and continued in service. You received a final observed fitness report ending in February 2015. According to this fitness report, you were considered a “uniquely resourceful leader of Marines whose attention to detail and steady determination ensures he consistently produces quality results.” Further, according to your final fitness report, you “processed over 7,060 personnel directly contributing to the security of the █ and that you “expertly led your squad in the defense of one of

the critical posts that formed the final perimeter.” The fitness report explained that you possessed “significant growth potential and is an ideal candidate for resident sergeant's course” and recommended you for advancement with your peers. You completed your required active service on 26 April 2015, and you were separated with an Honorable characterization of service and an RE-1A (fully qualified for reenlistment) reentry code.

In your petition, you request that you receive a medical discharge. In support of your request, you contend that you should have been medically retired as a result of post-traumatic stress disorder (PTSD) and traumatic brain injury (TBI) that was incurred when you were on active duty. In support of your petition, you provided documentation including medical records, witness statements, as well as a statement from a provider at the U.S. Department of Veterans' Affairs (VA). You also provided documentation from the VA reflecting you currently have a 100% service connected disability rating from the VA.

The Board carefully reviewed all of your contentions and the material that you submitted in support of your petition, 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 of 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 as defined within the disability evaluation system at the time of your discharge. In reaching its decision, the Board observed that there is no evidence in your service record, and you provided none, describing that, while you were on active duty, you were evaluated by a medical board with a referral the Physical Evaluation Board. The medical records you provided demonstrated that you received regular medical treatment and that you were recommended to follow up with medical to explore medical hold, but there is no documentation in the available materials demonstrating that you were in fact evaluated by a medical board and referred to the PEB. Similarly, there is no information in the available materials constituting a non-medical assessment from your command explaining that you were unable to perform your duties. To the contrary, your final fitness report described your service in laudable terms and you were in fact recommend to the sergeant's course. These descriptions are not consistent with you having a condition that rendered you unfit to serve. In sum, there is no evidence that, while you were on active duty, you suffered an unfitting condition such that you were unable to perform the duties of your “office, grade, rank or rating as a result of a qualifying disability condition.” The Board further observed that you were also assigned an RE-1A reentry code, demonstrating that you were fully eligible for reenlistment. If you were unfit for service based on a qualifying disability condition, you would not have been eligible to reenlist.

In addition, with respect to the post-service findings by the VA that you provided, the fact the VA rated you for service connected disability conditions that were diagnosed during your time in the Marine Corps did not persuade the Board these conditions were unfitting at the time of your discharge from the Marine Corps. The Board noted that 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. 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,

3/21/2023

