



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

■
Docket No. 4352-22
Ref: Signature Date

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 28 November 2022. The names and votes of the panel members 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 5 August 1991. On 11 February 2009, a Medical Evaluation Board (MEB) referred you to be reviewed by the Physical Evaluation Board (PEB). On 20 February 2009, you submitted a Request Mast stating you believed you were being treated unfairly by your command. On 25 August 2009, the PEB issued a reconsideration finding you were unfit with a 30% disabling condition. On 22 February 2010, you submitted a request to remain on active duty for two more years until your retirement, which was not granted. On 16 June 2010, you were directed to be transferred to the temporary disability retired list (TDRL). On 30 July 2010, you were released from active duty and issued a DD Form 214 reflecting your transfer to the TDRL.

On 9 November 2011, you were ordered to be reviewed by a Periodic Physical Examination. On 12 September 2012, you were transferred to the Permanent Disability Retired List (PDRL). The letter you were provided informing you of your transfer to the PDRL explained, “[t]his letter is an important document and should be attached to the original of your DD Form 214 as proof of your status on the Retired List by reason of permanent disability.”

In your petition, you requested that your record be corrected to show that you served 20 years in the Marine Corps so that you can receive Concurrent Retirement and Disability Pay (CRDP). In support of your request, you asserted that your command treated you unfairly and retaliated against you for filing a Congressional inquiry, and that you were not allowed to retire under the Temporary Early Retirement Authority (TERA). You provided documents in support of your petition, including materials from the U.S. Department of Veterans’ Affairs (VA) reflecting that the VA has awarded you a 70% service connected rating.

The Board 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 determined that it did not observe any error in your naval records. Your processing through the Disability Evaluation System appeared to have been handled appropriately and the Board did not observe, nor did you provide any documentation of, any defects in the process. In addition, the Board did not observe any injustice in your processing through the Disability Evaluation System and your subsequent placement on the PDRL. With respect to your assertion that you were not allowed to retire under TERA, other than your statement, your petition did not include material supporting your assertion that you were entitled to TERA, that you submitted a TERA request, or that your request was unfairly denied. As a result, in view of all of the entirety of your petition, including its attachments, and all relevant materials, the Board found there was no basis to provide you constructive service such that you may obtain a 20-year retirement and the benefit of CRDP.

With respect to your request for a new Certificate of Release or Discharge from Active Duty (DD Form 214), note that the DD Form 214 is issued upon the release or discharge of a member from active duty. Therefore, a DD Form 214 is not issued to reflect a transfer from the TDRL to the PDRL since the member is in a retired status at the time of the transfer. As described in the 12 September 2012 letter to you informing you of your transfer, that letter is an important document and should be maintained with your existing DD Form 214 “as proof of your status on the Retired List.” Consequently, in light of existing regulations pertaining to the issuance of the DD Form 214, the Board found no basis to issue you a new DD Form 214 reflecting your transfer to the PDRL. 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,

12/19/2022

[REDACTED]

Executive Director

Signed by: [REDACTED]