



**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. 4589-22  
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 19 December 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 8 July 1997. On 12 September 2005, you were evaluated by a Physical Evaluation Board (PEB) for conditions related to Diabetes Mellitus Type II, and found fit for continued service. You continued in service and in 2009, you were again evaluated by a PEB. In connection with your processing through the Disability Evaluation System, on 24 August 2009, your command provided a non-medical assessment (NMA). In the NMA, your command explained that you “recently sought medical attention for [your] case of Diabetes Mellitus.” The NMA continued:

SNM was diagnosed with this disorder in June of 2001. A Physical Evaluation Board (PE) was conducted and recommended 6 months of limited duty. [You were] taken off limited duty by LT [ ] because his condition could be managed with continued medication. It was also determined that there would be no further restrictions to duty required and [you were] returned to full duty. In September of 2005 [you were] the subject of another PEB. [You were] found fit for duty again and had regular insulin injections added to his medication requirements. In November 2006, [your] Primary Care Manager (PCM), [ ], signed a memo stating that [you were] determined to be fit for duty with no limitations and that he was worldwide deployable. During August 2009, SNM requested a medical assessment for another PEB following the rejection of his re-enlistment package and enlistment extension.

The next level of your chain of command reviewed the NMA, and provided comments on it by way of an endorsement. According to the endorsement:

1. This command does not endorse [your] attempt to be processed out of the Marine Corps for medical reasons. By the fact that this is the third attempt by [you] to gain this determination, and that [you are] currently being processed out of the Marine Corps due to service limitations, I assess this is an attempt by [you] to stay in the Marine Corps as long as possible.
2. [You have] been passed over twice for Staff Sergeant and has been granted an extension of 90 days in order to facilitate [your] transition.
3. I find [your] decision to submit for a PEB after [you] learned of [your] mandated separation as a question to the veracity of [your] medical claim.
4. I strongly recommend against retention of [you] for any reason.

Ultimately, the PEB considered your fitness for service, and on 29 April 2010, it issued its formal rationale. According to the formal rationale:

After careful consideration of the many facets of this member's case, the board concluded that the member is not working within his primary MOS for reasons that are not medically driven. His last hypoglycemic episode, by his own testimony, was in November 2009. The work restrictions cited by the endocrinologist (see Exhibit C-6) do not interdict typical activities as a mechanic. Therefore, based on the preponderance of evidence, the board finds that this member's diabetes does not render him unfit continue naval service.

The Board determined diagnosis 2 is Category III and does not preclude the continued performance of duties for the following reasons supported by the facts in evidence: No evidence was submitted that the member's hypertension has any impact on his ability to perform his duties.

In response to the findings of the PEB, you filed a petition for review (PFR) with the Secretary of the Navy Council of Review Boards (CORB). On 5 August 2010, the CORB denied your PFR as follows:

I concur with the PEB's determination your condition does not preclude you from performing your duties. Per Department of Defense and Navy regulations, the diagnosis of condition or disease does not, in itself, justify the award a disability rating with entitlement to either severance or retired pay. The evidence must also demonstrate that as a result of the condition or disease, an individual is unable to perform duties appropriate for his "office, grade, rank or rating." In your case, the documentary evidence contained in your record, as well as the testimony produced at your formal hearing, shows you are capable of accomplishing appropriate duties and your condition has had minimal impact upon your job performance. Your contention the medical risks posed by your condition, vice your actual disability, compel an unfit finding is not persuasive. Per your own testimony, your last hypoglycemic episode was in November 2009, which makes the risk of your lapsing into a diabetic coma or suffering a seizure unlikely, notwithstanding the assertion to the contrary made in the 30 June 2010 letter [REDACTED] Endocrinology Department.

On 10 August 2010, the PEB informed the Commandant of the Marine Corps of its finding that you were fit for duty. On 30 September 2010, you were discharged with an honorable characterization of service due to being non-retained on active duty.

In your petition, you request to have your honorable discharge changed to a medical disability retirement. In support of your request, you contend that the PEB did not follow proper procedures by choosing not to rate your disabilities. You further assert that had the PEB rated your disabilities, it would have made a thirty percent disability finding, which is required for medical retirement. In support of this assertion, you state that, immediately after your discharge, the U.S. Department of Veterans Affairs (VA) awarded you a seventy percent service connected disability finding, which you assert shows that you should have been medically retired if you were properly rated by the PEB.

The Board carefully reviewed all of your contentions and the material that you submitted in support of your petition, including the documentation from the VA 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 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.

At the outset, on its review of the documentation that you provided, as well as the documentation associated with the PEB at issue in your petition, including your PFR and the NMA, the Board did not observe any error or injustice in the proceedings and findings. Upon review, the Board concurred with the several findings related to your asserted conditions by the PEB in its Formal

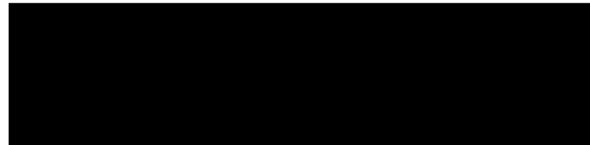
Rationale, as well as the detailed findings by the CORB in reviewing your PFR. In your petition, you did not provide documentation sufficient to counter these detailed findings.

With respect to your assertion concerning the VA, the fact that the VA may have rated you for a disability condition that it determined was 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 because 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. Finally, the Board also did not observe any evidence of injustice in your records. Accordingly, based on the foregoing, the Board 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,

1/17/2023

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Deputy Director

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