

DEPARTMENT OF THE NAVY

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

> Docket No. 5070-22 Ref: Signature Date



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 16 March 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.

A review of your record shows that you enlisted in the enlisted in the Marine Corps Reserve for a commitment of 8 years, of which 6 years was to be served in the active reserve component, and you commenced an initial period of Inactive Duty for Training on 16 May 2011. On 8 December 2011, you were released from active duty and returned to your reserve unit. On 5 August 2012, you were issued a Page 11 formal counseling explaining that you were found to be Temporarily Not Physically Qualified (TNPQ) to remain in the Marine Corps Reserve. According to your reserve point record, the last drill periods in which you participated were on 6 January 2013. On 9 February 2013, you were issued a Page 11 formal counseling explaining that you were found to be Dental Class III (out of standards) and you were given 180 days to bring your Dental Class to Class II status. Your service record does not contain records reflecting the final status of your release from the reserve.

In your petition, you request that your discharge be changed to medical. In support of your request, you contend that you were under the impression that you received a medical discharge because your removal from the Marine Corps was due to medical conditions. You explained that you applied for a Department of Veterans' Affairs (VA) home loan and found out that you did

not qualify because you did not fulfill the time in service required. You further assert that you were removed from the Marine Corps solely due to a medical reason and, thus, the reason for your discharge should be changed to accurately represent his reason for discharge.

The Board carefully reviewed all of your contentions and 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. After your release from your initial period of active duty for training, you participated in the Marine Corps Reserve. The Board observed that your service record includes documentation that while you were in the reserve you were found TNPQ, and also found to have Class III dental status. As mentioned above, your service record does not contain documents reflecting your final release from the Marine Corps Reserve. In such circumstances, the Board applies a presumption of regularity. In your case, the Board presumed that your reserve unit had a basis for discharging or releasing you from the Marine Corps Reserve. Such basis may have been related to your TNPQ status or your Class III dental status. Since there is no evidence, and you provided none, that you incurred or aggravated a qualifying disability condition while in the Marine Corps Reserve, and received a Line of Duty determination for the condition, the Board concluded insufficient evidence of error or injustice exists to change your discharge status. 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,

4/6/2023