



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. 5304-22
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 9 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, prior to entry into the Marine Corps, you suffered a Lisfranc's fracture dislocation on your left foot and underwent surgery. You were allowed into the Marine Corps on a waiver. Upon entering the Marine Corps, you experienced increasing severe pain to your left foot along the Lisfranc's joint area. On 2 February 1995, you were the subject of a Medical Board at Naval Hospital █ that determined you did not meet the minimum standards for enlistment, based on your preexisting Lisfranc's fracture, left foot, and recommended you be discharge for erroneous enlistment. On 14 June 1995, the Commanding General, 1st Marine Division, directed that you be discharged from the U.S. Marine Corps for erroneous enlistment with a reenlistment code of RE-3P and an Honorable characterization of service.

In September 2016, you petitioned the Board requesting correction to your Certificate of Release or Discharge from Active Duty (DD Form 214) by removing "Erroneous Enlistment" as the narrative reason for separation (Docket No. 8053-16). You claimed that the DD Form 214 was incorrect and was causing problems with your Department of Veterans Affairs (VA) medical benefits. The Board previously granted relief as a matter of justice, noting that your service

record did not contain a DD Form 214. The Board found that you were entitled to a DD Form 214 that reflects an Honorable discharge, a reentry code of RE-3P, a narrative separation reason of "Secretarial Authority," and separation authority under Marine Corps Separations Manual (MARCORSEPMAN) paragraph 6421. Furthermore, the Board directed that the VA be informed that your application was received by the Board on 7 September 2016.

For this petition, you request your discharge be updated to a disability discharge. You allege you are not qualified for VA health benefits because you did not receive a disability discharge from the Marine Corps.

The Board carefully reviewed your petition and the material that you provided in support of your petition and disagreed with your rationale for relief. In reaching its decision, the Board noted that the Medical Board recommended that you be discharged by reason of erroneous enlistment based on your preexisting Lisfranc's fracture; concluding that you did not meet accession standards and were erroneously allowed to enlist. The Medical Board stated, despite your medical history, you received a waiver to enter the Marine Corps; however, upon enlistment you were soon unable to perform duties due to the medical condition that required a waiver. Therefore, the Board found that you were properly discharged for erroneous enlistment, due to the preexisting nature of your disability condition, and not eligible for a disability discharge. The fact the Board later changed your narrative reason for separation to Secretarial Authority was deemed irrelevant for the purposes of this application. Ultimately, the Board determined you did not meet the criteria for assignment of a disability discharge. 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,

4/4/2023

