



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. 5976-22
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 2 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.

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 on 2 November 2009. In approximately 2010, you noticed a lump on your thyroid, and in 2011, you underwent surgery to remove what was determined to be a cancerous tumor. You completed your required service in the Marine Corps without incident, and, on 1 November 2013, you were released from active duty with an Honorable discharge and you were designated as fully qualified for reenlistment. Thereafter, you affiliated with the Marine Corps Reserve. On 2 December 2017, you were issued a formal written warning concerning your failure to complete the combat fitness test. On 10 February 2018, you were issued a page 11 warning noting that you were required to attend remedial physical training on every drill day at your reserve unit. On 7 April 2018, you were provided a formal written warning that you were not recommended for promotion to sergeant due to your failure to complete professional military education, physical fitness

shortcomings, lack of leadership, and lack of initiative. The dates of your service in the Marine Corps Reserve are uncertain, as the records of your reserve service do not appear to be complete in your official military personnel file (OMPF).

In your petition, you request that you be awarded a disability retirement. In support of your request, you contend that you had thyroid cancer that was treated while you were on active duty and therefore, you believe you should have been medically retired. You have provided documentation from the U.S. Department of Veterans' Affairs (VA) that they have rated you with a 10% disability based on residual thyroid surgery. The Board has also been provided documentation that you contacted your Congressman inquiring as to your statement that you believed you were scheduled to attend a medical evaluation board. In response to that Congressional inquiry, Headquarters Marine Corps instructed Commander, Marine Corps Reserve to conduct a thorough inquiry. The inquiry did not result in any findings that you were in fact referred to, or should have been referred to, a medical evaluation board.

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. Notably, the Board observed no evidence that you had any unfitting condition while on active duty. Specifically, although you underwent a surgery while you were on active duty in 2011, and you received additional mitigation treatment of the cancer in 2012, you continued to serve without incident thereafter until you were released from active duty in November 2013. Your reentry code designated that you were fully qualified for reenlistment. If you were physically unfit to serve, or there was evidence that you were pending a medical evaluation board, you would not have been issued an RE-1A reentry code. Further, you were allowed to enlist in the Marine Corps Reserve. Enlistment in the Marine Corps Reserve has a fitness requirement, which you obviously met or you would not have been allowed to enlist. Additionally, although your reserve OMPF records are not complete, the available documents demonstrate that you were not successful in the reserve based on documented lack of initiative, failure to meet your professional military education requirements, as well as failures to meet readiness standards.

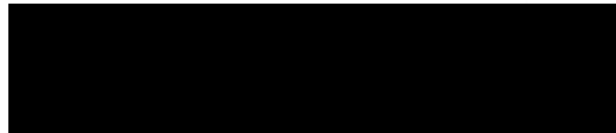
Finally, the fact the VA rated you for service connected disability conditions that were diagnosed during your time in the Marine Corps did not persuade the Board these conditions were unfitting at the time of your discharge from the Marine Corps, because eligibility for compensation and pension disability 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. Regardless, in your case, your VA documentation demonstrates that you actually had a 0% finding by the VA for residuals of thyroid cancer through May 2018. 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

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Executive Director

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