



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. 6311-22
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 23 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 revealed that you enlisted in the Marine Corps Reserve and commenced an initial period of active duty on 1 November 2004. You completed your initial training on 17 June 2005 and continued your service thereafter in the Marine Corps Reserve. On 12 March 2009, you received a written formal counseling concerning your body composition assessment. On 15 March 2009, you were counseled that you were eligible for promotion but not recommended due to your failure to meet weight standards. On 23 September 2009, you received a written formal counseling that you failed the body composition assessment. You were eventually placed into a Military Readiness Review (MRR) by your reserve unit and, on 14 July 2021, you were found to be not physically qualified (NPQ) by the Bureau of Medicine and Surgery (BUMED).

On 15 July 2021, Commander, Marine Forces Reserve, directed that you be processed for discharge due to chronic low back pain, knee pain, alcohol use disorder, and depression. On 21 July 2021, you were notified of the initiation of administrative separation processing due to being found not physically qualified for retention. The notification letter explained, among other things, that you could “[r]equest a hearing before the Physical Evaluation Board (PEB). If this

option is elected, you are advised that disability benefits are payable only if you are entitled to active duty pay and allowances and have been issued a Line of Duty (LOD) entitlement to receive such allowances. If no LOD has been issued, the PEB findings will be either fit or unfit for duty.” There is no indication in your available records that you obtained a LOD finding, nor did you provide one with your petition. Your final fitness report ended 14 August 2021, which coincided with your discharge date, and described your performance as “highly dedicated,” and that you “successfully accomplished assigned tasks.” The fitness report was considered adverse because it reported that you failed the physical fitness test.

In your petition, you request that your discharge be changed to a medical retirement. In support of your request, you contend that you were injured while in service and you were unable to continue your active duty service due to the injury. You further explain that all of your injuries are now considered service connected through the Department of Veterans’ Affairs (VA) for claims that you made while you were still in the Marine Corps Reserve. Further, you assert that your separation was not explained correctly, because you were told that the PEB was only available if you had documentation to reverse the MRR decision. You provided documentation that, on 7 April 2021, the VA provided you a letter containing findings of a variety of disabilities, and that, eventually, you were determined by the VA to be 100% disabled.

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. The Board observed no error or injustice in your record. With respect to your MRR process, the Board observed that you were advised in connection with your discharge, that, in order for the PEB to make a finding of unfitness within the Disability Evaluation System (DES),¹ you, as a reservist, were required to obtain an LOD finding. An LOD finding would demonstrate that your injuries were incurred during a period of active duty or other covered period. In your case, there is no such document in your available record, nor did you provide such a letter. Thus, in the absence of an LOD, the PEB was constrained to determine whether you were physically qualified or NPQ to continue service in the Marine Corps Reserve. Accordingly, in the absence of an LOD finding, you were appropriately not placed into the DES.

Similarly, your assertion that the VA awarded you service connection for disabilities after your service did not persuade the Board these conditions were unfitting at the time of your discharge from the Marine Corps Reserve, nor do they serve to fulfill the requirement of an LOD finding, 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

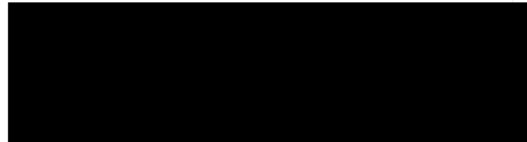
¹ You did not have an LOD, but if you did and you were placed into the DES, in order to qualify for military disability benefits through the DES with a finding of unfitness, a service member must be unable to perform the duties of their office, grade, rank or rating as a result of a qualifying disability 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.

unfitness for military duty be demonstrated. As noted, the reason for your discharge was a result of a NPQ finding and not a finding of unfitness with the meaning of the DES. 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,

4/11/2023



Executive Director

