



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. 6433-22
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 2 March 2023. The names and votes of the panel members 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 and commenced a period of active duty on 26 May 1993. On 2 July 1993, you reported to medical and complained of pain in your knees. On 6 July 1993, you were placed on light duty and recommended for a medical board. On 12 July 1993, you were diagnosed with preexisting chondromalacia of both knees and symptomatic debridement and recommended for administrative separation for erroneous enlistment. On 21 July 1993, you were discharged pursuant to the medical board findings with an uncharacterized entry level separation.

In 2020, you filed a Petition with this Board in which you sought a medical discharge. The Board denied your petition as follows: "the Board found medical evidence that you entered the Marine Corps with a history of knee issues that previously required surgery. In their opinion,

this supports the medical board finding that your chondromalacia condition preexisted your entry into the Marine Corps and should have disqualified you from enlistment. Based on this finding, the Board concluded you were appropriately discharged for erroneous entry and assigned an uncharacterized entry-level separation due to your active duty service that totaled less than 180 days.”

In 2022, you filed a request for reconsideration of your previous petition, which the Board denied by letter dated 19 July 2022. In denying your request, the Board explained,

the Board observed that there were no findings that you had a qualifying disability condition while you were on active duty. Rather, the Board found that you were in fact discharged based on contemporaneous medical findings that you had a condition that existed prior to entry, which was disqualifying for enlistment. With respect to your statement that the Marine Corps knew about your knee condition prior to your enlistment, the Board noted that confirms that you had a disqualifying condition prior to enlistment, that you should not have been enlisted due to your preexisting disability condition, and were appropriately discharged for erroneous enlistment. In reaching its conclusion, the Board also determined that the presumption of regularity applied to the process employed with respect to the medical findings that resulted in your separation.

In your current petition, you again seek reconsideration of your request to have your entry level separation changed to a medical discharge. In support of your request, you argue that you had informed your recruiter of your knee issues prior to entry and that you entered service with a waiver. You further assert that the Board stated that you had hurt both of your knees, but that you actually only hurt one knee.

The Board carefully reviewed all of your contentions and the material that you submitted in support of your request for reconsideration, and the Board disagreed with your rationale for relief. The Board determined that the new material that you provided in support of your request for reconsideration was insufficient for the Board to change its prior decisions. In reaching its decision, the Board reviewed your prior petitions before the Board including its decision letters, and affirmed its rationale for denial as fully explained in its prior letters to you. 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

