



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

█  
Docket No. 8261-22  
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 25 January 2024. 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, 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 entered active duty in the United States Marine Corps on 5 September 2006. You deployed to █ in support of Operation Enduring Freedom from 7 April 2008 until 30 November 2008. A 16 November 2009 medical record states you had chronic right knee pain, you were referred to sports medicine, but you were unable to make the appointments due to training events. On 28 December 2009, you were placed on limited duty for six months due to right medial meniscus tear. On 30 September 2010, you were returned to full duty without limitations. On 1 December 2010, you were discharged with an Honorable characterization of service. Your Certificate of Release or Discharge from Active Duty (DD

Form 214) states completion of required active service as the narrative reason for separation and a reentry code of RE-1A.

For this petition, you request medical retirement or referral to the Disability Evaluation System (DES) for a review of your unfitting conditions. You claim after the 2008 deployment you had several conditions to include your right knee, back, neck, and arm. You further contend that you received harassment from your command after disclosing these injuries, and that had you received proper care for these conditions, you would have been medical retired. You included a rating decision from the Department of Veterans Affairs (VA), civilian healthcare medical records, and a letter from a Marine who served with you to support your contentions.

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 observed that in order to qualify for military disability retirement, a medical provider refers a service member to the DES if they believe the member has a condition that prevents them from continued service. In this process, the service member has to be found unfit; meaning there must be evidence the service member is unable to perform the duties of their office, grade, rank or rating as a result of a qualifying disability condition. In reviewing your record, the Board concluded the preponderance of the evidence does not support you were unfit; in fact, there is sufficient evidence of the contrary.

First, on 30 September 2010, a medical board convened and determined you were fit to return to full duty without limitations. You acknowledged and did not submit a rebuttal to the decision. Second, you passed your separation physical in October 2010 and your DD 214 states a re-entry code of RE-1A, documenting the service found you eligible, and recommended you for reenlistment. There is no information in your record, and you did not provide any documentation, that you were denied re-enlistment due to any medical conditions. Instead, your record shows you were counseled for not being promoted to corporal in the Reserves in 2012 and 2013 due to not completing the required professional military education requirement. Third, despite your VA rating and assertions of debilitating pain, the Board noted you were able to serve as a firefighter after your discharge, a physically strenuous occupation, further adding evidence that you did not have an unfitting condition at the time of discharge. Finally, the Board was not persuaded by your VA evidence since 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.

In light of the foregoing standard applicable to the DES, the Board did not discern any facts that would support you being eligible for a disability retirement or referral to the DES. Rather, the evidence of record demonstrates that after successfully completing your initial active duty obligation, despite being eligible for reenlistment, you chose not to reenlist and continue your active duty Marine Corps career. Therefore, in its review and liberal consideration of all the evidence, the Board did not observe any error or injustice in your naval records. 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,

2/26/2024

