



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

■
Docket No. 9039-22
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 you did not file your application in a timely manner, the statute of limitation was waived in the interest of justice. A three-member panel of the Board, sitting in executive session, considered your application on 1 February 2024. 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.

A review of your service record as well as materials that you provided reveals that you enlisted in the Marine Corps and commenced a period of active duty on 8 September 2004. In February 2011, you were involved in a motorcycle accident. Thereafter, a line of duty/misconduct investigation was conducted, which found that injuries you sustained in the motorcycle accident were in the line of duty and not due to your misconduct. On 29 June 2013, you were separated with severance pay due to a disability.

In your petition, you request that your record be corrected by directing that you be reviewed by the Physical Evaluation Board to determine if you should have been medically retired from the Marine Corps. In support of your request, you contend that your injuries were directly caused by military service, which you contend is proven by the line of duty investigation which reflects you were injured in the line of duty. You also provided a letter from the Department of Veterans' Affairs (VA) letter indicating that the VA has found that you are permanently and totally disabled solely from military service. Further, you reiterate that the line of duty investigation clearly stated the accident was not from your own misconduct and there are no records indicating

there has been any misconduct in regard to any of your injuries that happened during your military service. You also argue that you were initially placed on light duty after you had surgery while in service, and the surgeon explained that your life would change and your ability to continue doing your military tasks was in doubt.

The Board carefully reviewed your petition and all supporting documentation that you provided and disagreed with your rationale for relief. At the outset, inasmuch as you were in fact discharged due to a disability, you did not describe in your petition, or in any of its supporting materials, the nature of your disagreement with the actual finding that resulted in your disability discharge with severance pay. With respect to your assertion that while you were on active duty, a line of duty investigation found that you engaged in no misconduct, the Board did not observe any assertions that you had, in fact, been denied any benefit as a result of any misconduct findings; thus, the relevance of this assertion was not clear to the Board.

However, the Board also considered your assertions that you were placed on light duty while you were on active duty, and that your surgeon indicated that, post-surgery, you may not be able to continue in the Marine Corps. The relevance of these assertions were also not immediately clear to the Board, inasmuch as it is not disputed that you were, in fact, treated for a physical condition while you were on active duty and your narrative reason for discharge reflects you were discharged due to a disability. The Board also did not find your assertion persuasive that, post-service, the VA found you to have several service connected disabilities, which the VA determined to be permanent and total. This is because the VA does not make determinations as to fitness for service as contemplated within the service disability evaluation system. Rather, 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 your case, you were already found to have, and rated with, an in-service unfitting condition, which resulted in your disability discharge with severance from the Marine Corps. Absent substantial evidence that the PEB findings in your case were erroneous, the Board determined the presumption of regularity applies and insufficient evidence an error or injustice exists with your PEB findings. Ultimately, the Board determined the post-service findings by the VA were insufficient to support a finding that an error exists with your record. 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

