



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

█
Docket No. 1136-23
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 23 February 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.

A review of your record shows that you enlisted in the Marine Corps and commenced a period of active duty on 31 January 2001. On 22 May 2002, you were convicted by a summary court-martial for charges including making false official statements and altering, concealing, removing, mutilating, and obliterating a public record. On 10 September 2002, you underwent a limited duty board, which restricted you from running and impact exercises. On 24 October 2002, you were counseled for being recommended by medical authority to be administratively separated due to a condition, not a disability due to chronic patellofemoral syndrome. On 20 May 2003, you were convicted by a general court-martial for drunk and reckless driving, larceny and wrongful appropriation, assault, and disorderly conduct. Your sentence included that you be discharged from the naval service with a Bad Conduct Discharge. At the completion of your appellate review, on 25 January 2008, you were so discharged.

You filed an application with the Naval Discharge Review Board (NDRB), seeking to have your characterization of service and narrative reason for discharge changed. On 30 January 2014, the NDRB denied your application. In 2014, you also filed a petition with this Board seeking to have your characterization of service upgraded, arguing that your court-martial was inaccurate

and you that you were the victim of racial prejudice. This Board denied your petition on 20 October 2015.

In your current petition, you seek to have your discharge characterization and reason for discharge changed to a disability discharge. In support of your request, you contend that you had undiagnosed conditions while you were on active duty, and that your medical records demonstrate that you had conditions that caused your anger. You further explain that after you were placed on the proper medication, you were able to achieve accomplishments. You provided post-discharge medical records in support of your petition.

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 his or her office, grade, rank or rating as a result of a qualifying disability condition. Alternatively, a member may be found unfit if his or her 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 any the criteria for unfitness as defined within the disability evaluation system at the time of your discharge. In reaching its decision, the Board observed that there was no evidence in your record, nor did you provide any, that you incurred a qualifying disability condition while you were on active duty service in the Marine Corps. To the contrary, the only potential medical condition for which you were reviewed while you were in service was the medical board relating to your knee, and that condition was specifically found to have been a condition, not a disability. Further, the Board observed the actual reason for your discharge was as a result of your Bad Conduct Discharge, which was part of your sentence awarded by a general court-martial. Further, at time of your discharge, a discharge for misconduct that resulted in a BCD took precedence over disability discharge processing.

The Board acknowledged your assertion that you are obtaining treatment from the U.S. Department of Veterans' Affairs (VA) and it reviewed the medical documentation that you provided. Please note that the VA is a separate entity from the Navy Department, and should the VA award you a service connected disability, you should be aware that the award of such a disability for conditions connected to your service in the Marine Corps would 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. 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

