



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. 1332-23
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 28 September 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.

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 November 1991. On 20 May 1994, you were reviewed by a medical board and diagnosed with low back pain syndrome. The medical board further explained that you were “unable to perform further military service as a result of a disability, and that the disability did not exist prior to entry into the service. Therefore, it is considered to have been incurred in or to have been aggravated by a period of active military service.” Thereafter, the medical board referred you for review by the Physical Evaluation Board (PEB) for adjudication.

On 11 July 1994, President, PEB wrote to you explaining that you were found to be unfit for service due to Low Back Pain Syndrome at 10%, and that you were to be separated from the naval service with severance pay but without further disability benefits. On 15 July 1994, you

completed your election of options form in which you accepted the preliminary findings of the PEB. In accordance with the findings of the PEB, you were discharged, on 7 October 1994, due to “physical disability with severance pay.”

In your petition, you request that your discharge be changed from “non-service related” to “service related.” In support of your request, you contend that your injuries occurred while you were on active duty and you were not acting recklessly. You further explain that you still need treatment for your injuries but you are forced to pay for your treatment.

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, according to your service record, your discharge was not characterized or defined as “non-service related.” The Board noted that, in the context of your request, a finding of “service connection,” or, as you state, “service related,” is a determination that is made by the U.S. Department of Veterans Affairs (VA). This Board is not able to adjudicate such a finding. Thus, this Board was unable to provide the relief that you requested and denied your petition in its entirety. The Board recommended that you contact the VA for any determination of service connection for any claimed disability condition. 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,

10/11/2023

