



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. 2896-23
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 you did not file your application in a timely manner, the statute of limitation was waived in accordance with the 25 August 2017 guidance from the Office of the Under Secretary of Defense for Personnel and Readiness (Kurta Memo). A three-member panel of the Board, sitting in executive session, considered your application on 5 October 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, to include the Kurta Memo.

A review of your record shows that you enlisted in the Marine Corps and commenced a period of active duty on 14 May 1998. You completed your required active service on 19 May 2010 and thereafter affiliated with the Marine Corps Reserve. While you were serving in the Reserve, you participated in a period of annual training from 22 April 2021 to 4 May 2021. Thereafter, you filed for line of duty medical/incapacitation benefits (LODB) as a result of the injuries that you contend occurred during the period of annual training. You provided information that, on 14 September 2021, the you received findings by the Department of Veterans Affairs (VA) for a variety of service connected disabilities.

On 25 May 2022, the Headquarters, Marine Corps Reserve Medical Entitlements Determination (RMED) Section disapproved your request for Medical/Incapacitation Pay, stating, “medical and incapacitation pay benefits cannot be approved due to insufficient medical and administrative documentation in the submission of initial Line of Duty (LOD) benefits request.” The RMED reasoned as follows, in part:

- b. The request is missing a detailed explanation from the member and the unit commander regarding late submission of initial LOD benefits request from 26 April 2021 to 9 May 2022 (over one year after the acclaimed initial injury date). There was no mention of an injury or medical documentation during the (180 day) period.
- c. All the provided medical encounters list the injuries requested as chronic in nature with no specific mode or mechanism any re-aggravation to the injuries during the claimed annual training period of 22 April 2021 to 4 May 2021.
- d. The 21 September 2021 Medical encounter states the member's chronic lumbar back pain and migraines, and PTSD symptoms have continued to worsen over the last six months. There is no specific mode or mechanism annotated that caused the worsening of the injuries.
- e. The 14 April 2021 medical encounter for a follow-up of chronic migraines annotated that the member meets the retention standards for fitness and suitability for continued service. It further states the member is worldwide deployable qualified and cleared for any TDY or deployments.
- f. The 28 April 2022 Physician Evaluation Form list the member's injuries as chronic but list the injuries incurred while on annual training orders for the Marine Corps have impacted the member's ability to perform day to day duties with his civilian employer. It is not identified which annual training period the alleged injuries were incurred or aggravated and provided no mode or mechanism of an injury that is stated that occurred.
- g. Member performed a Class I PFT score of 256 on 5 May 2021, which is after the claimed date of injury listed in MCMEDS. Case is missing medical documentation indicating the member's injuries were aggravation during or after performing the PFT while in a reserve duty status.
- h. Case is missing the SF600 from the Medical Department Representative or witness statement from the unit leader or whom witnessed the member's aggravation to previous injuries or whom the member reported the aggravation to the previous injuries to that provides an MOI while in a reserve duty status.
- i. The request provided a Medical Hold page 11. As the injuries are claimed to have occurred during a 13 day set of Annual Training orders it would not qualify for Medical Hold.
- j. The 21 September 2021 medical note annotates the member is on limited duty and assigned a PEBLO. As the member does not have an approved Medical Hold or Line of Duty the member should not be in the PEB.
- k. While the member provided the VA rating, these are not part of the consideration in regards to Line of Duty benefits determination.

On 2 August 2022, you appealed the denial of your request for medical/incapacitation pay benefits. Your command provided an endorsement, which explained that you were placed on a limited duty status outside of the proper process. It otherwise did not provide a significant amount of new information. On 16 October 2022, Commanding Office, Wounded Warrior Regiment provided a second endorsement on your appeal recommending denial. On 25 January 2023, the Administrative Law Division of the Office of the Judge Advocate General (Code 13) denied your appeal, as follows:

2. All of your claimed conditions pre-existed your Reserve component active-duty period of April 22, 2021 to May 4, 2021. As a result, none of these conditions were incurred during your period of Reserve service. Therefore, in order to qualify for LOD-HC benefits under reference (c), you must prove that these conditions were aggravated by your Reserve component service. Reference (c) defines aggravated as “The worsening of a pre-existing medical, dental, or behavioral condition over and above the natural progression of the condition as a direct result of military duty.”

3. The record shows that your Reserve duties over the course of your thirteen-day active-duty period consisted largely of monitoring computer screens in a seated position during the night watch and completing a physical fitness test. The record fails to establish, by a preponderance of the evidence, that this military duty directly caused any of your claimed conditions to worsen beyond their natural progression. Accordingly, your claimed conditions are not eligible for LOD-HC benefits under reference (c) and your appeal must be denied.

In your petition, you request approval of your request for medical/incapacitation pay benefits and line of duty determination, dated 25 May 2022; and the granting of a medical disability retirement for Post-Traumatic Stress Disorder (PTSD), Traumatic Brain Injury (TBI), Major Depressive Disorder, migraines hearing loss, lumbar strain with degenerative changes, right and left lower extremity radiculopathy, cervical strain, onychomycosis, left and right hip strain, left shoulder strain, and left and right knee patellofemoral syndrome; or, in the alternative, referral to the Integrated or Legacy Disability Evaluation System for medical evaluation. In support of your request, you assert that the Marine Corps erred in not properly granting medical/incapacitation pay benefits and line of duty determination to numerous medical conditions directly caused by your service in the Marine Corps. You also contend that the Marine Corps erred in not referring you to the Disability Evaluation System for your medical disabilities that are unfit for continued service.

The Board first addressed your request for medical/incapacitation pay benefits and LOD determination. In reviewing your request, including all of the material that you provided, the Board determined that the evidence was insufficient to grant the request. At the outset, the Board concurred with the findings set forth in the denial letter from Code 13. The Board observed that the several conditions of which you complained appear to be chronic conditions and there was insufficient evidence that they were incurred or aggravated during your period of annual training.

With respect to your request to be granted a service disability retirement or to be placed into the Disability Evaluation System, 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 keeping with the letter and spirit of the Kurta Memo, the Board gave liberal and special consideration to your record of service, and your contentions about any traumatic or stressful events you experienced. 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 their office, grade, rank or rating as a result of a qualifying disability condition. Alternatively, a member may be found unfit if their 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 the criteria for unfitness as defined within the Disability Evaluation System at the time of your retirement. At the outset, the Board observed that you served a period of active duty from May 1998 to May 2010. There is no indication that during your period of active service you were referred to a medical evaluation board for any potential unfitting conditions. Similarly, there are no indications that you were unable to perform your work. To the contrary, upon your release from active duty, you were assigned an RE-1A reentry code, designating you as fully qualified for reenlistment. If you were unfit for service due to medical conditions, you would not have received an RE-1A reentry code. Further, you were then able to affiliate with the Marine Corps Reserve, which also evidences the fact that you were fit for service, because if you were physically unfit for service, you would not have been able to affiliate in the Reserve. You thereafter served in the Marine Corps Reserve for more than ten more years, and there is no evidence that during that period of service in the Reserve you were subject to any medical conditions that were potentially unfitting until the annual training period at issue in your petition. Code 13 has denied your request for medical/incapacitation pay benefits and a line of duty finding for the injuries you claim were aggravated during your annual training. Code 13 cogently explained why it denied that claim. A line of duty finding is required for reservists to be placed into the disability evaluation system and to receive a service disability retirement, because a nexus between the claimed injuries and service must be established. In sum, as noted, there is simply no basis for you to be placed into the Disability Evaluation System or to receive a service disability based on your active duty service which ended in 2010. Similarly, you have not demonstrated any basis for such as a result of your service in the Marine Corps Reserve.

With respect to your citation to medical findings by the VA, which included a finding that you have PTSD, the Board did not find this evidence persuasive 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. Further, the Board observed that, even assuming

that you had PTSD while you were in the service, the objective records demonstrate that it did not interfere with your performance. On this point, the Board observed that there is no indication that you were unable to perform your duties as a result of a diagnosis of PTSD. In fact, the VA documentation demonstrates that you had this finding since at least 2016, and, despite this finding by the VA, you continued in service in the Reserve without any noted deficiencies. In fact, your fitness report ending May 2021 described you as a “top 3” senior noncommissioned officer and that you could be “relied upon to fill whatever responsibility for the sake of the organization as a whole.” In sum, 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,

10/30/2023

