



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. 5162-23
Ref: Signature Date

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Dear Petitioner:

This is in reference to your reconsideration request 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 7 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, applicable statutes, regulations, and policies, to include the Kurta Memo.

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 7 October 1999. You deployed in support of █ and █ from 21 March to 4 September 2003. You deployed again to █ in support of █ from 14 February to 18 September 2004. You promoted to staff sergeant on 1 April 2010 and deployed to █ in support of █ from 10 July 2010 to 13 March 2011. On 13 June 2012, you were discharged at the completion of your required active duty with a reentry code of RE-1A, documenting that you were recommended and eligible to re-enlist.

You subsequently enlisted in the Marine Corps Reserves (USMCR). Your last recorded fitness report, covering the period 30 September 2012 to 30 September 2013, documents your

performance as an [REDACTED]

On 20 March 2017, you were discharged from USMCR.

For this petition, you request an active-duty disability retirement. You claim you were denied reenlistment into the USMCR due to medical conditions you incurred while servicing on active duty. You argue that the Marine Corps erred by not rating you a medical retirement. You included a rating decision from the Department of Veterans Affairs (VA), showing the VA rated you for PTSD and traumatic brain injury.

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 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, and their possible adverse impact on your service, to include whether they qualified you for the military disability benefits you seek. These included, but were not limited to, your contention that you deserve a medical discharge because at the time you were discharged you suffered from a mental health condition.

In reaching its decision, the Board observed that in order to qualify for military disability retirement, a service member is referred by their medical providers to the Disability Evaluation System (DES). 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 a finding that you met the criteria for unfitness as defined within the DES. According to your record, you were not placed on limited duty and your Certificate of Release or Discharge from Active Duty (DD-214) states a reentry code of 1A, documenting the service found you eligible to reenlist. In addition, you were found qualified to enter the Reserves, served a year on active duty in the IMA and your IMA fitness report did not document any medical condition preventing future service. Finally, the Board noted you did not provide any documentation that you were denied re-enlistment due to medical conditions. Moreover, the Board noted your argument for a disability discharge is based on the VA's decision to issue you service connected disability ratings. The VA issues disability ratings without regard to fitness for continued naval service.

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. Rather, the evidence of record demonstrates that you were discharged after successfully completing your active duty obligation and you continued to successfully serve in the Marine Corps Reserve. 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,

9/25/2023

