



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

■
Docket No. 5197-23
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 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.

A review of your record shows that you enlisted in the Marine Corps and commenced a period of active duty on 2 October 2000. On 31 August 2004, you were reviewed by a medical board in connection with back conditions. The medical board diagnosed you with low back pain/degenerative disc disease and referred you to be reviewed by the Physical Evaluation Board (PEB). In connection with your forthcoming evaluation by the PEB, on 2 September 2004, your command prepared a non-medical assessment (NMA), in which your commanding officer explained the background of your injuries and concluded, "I firmly believe he has a legitimate injury in which he will not be able to perform basic Marine Corps duties or tasks in the future." On 13 September 2004, you received a pre-separation physical which found that you were physically qualified for separation.

On 5 October 2004, you were reviewed by an informal PEB (IPEB), which found that you had chronic low back pain, degenerative joint disease, and spondylolisthesis and you were considered unfit for service with a 20% rating. On 12 October 2004, you accepted the findings of the IPEB

after being counseled as to your options and your understanding of your options. In doing so, you waived your right to submit new or additional information or to demand a formal hearing. On 20 October 2004, the IPEB reported its findings and recommending that you be discharged due to disability with severance at 20% disability. On 30 November 2004, you were discharged due to your unfitting disability condition and paid severance pay.

In your petition, you request a disability retirement or, in the alternative, that you be referred into the Disability Evaluation System (DES). In support of your request, you contend that your discharge was in error because you should have been referred to the DES for clearly unfitting conditions.

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. The Board determined the presumption of regularity applies in your case. The Board relies on a presumption of regularity to support the official actions of public officers and, in the absence of substantial evidence to the contrary, will presume that they have properly discharged their official duties. In reaching its decision, the Board observed that your petition contained insufficient evidence to demonstrate that there was an error or injustice in the findings of the IPEB that resulted in your disability discharge with severance. In other words, you did not provide any evidence that tended to demonstrate that the IPEB's finding that you had a 20% disability rating, and that you should be discharged with severance pay as a result of an unfitting condition, was in error. As a result, upon review, the Board did not find any apparent error or injustice in the IPEB's findings, which you accepted at the time. 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,

10/16/2023

