



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. 5793-23
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 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 21 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, to include the Kurta Memo.

A review of your record shows that you entered active duty in the Marine Corps on 1 August 2005. While deployed to a combat zone, on 16 July 2007, you were struck by a concussive blast and sustained injuries. On 19 November 2009, the Physical Evaluation Board (PEB) found you Unfit for post-traumatic stress disorder (PTSD) and low back pain. You were separated on 30 January 2010 and placed on the temporary disability retirement list (TDRL).

The record shows you attended a Periodic Physical Examination (PPE) in June 2011 and September 2011. On 3 October 2011, the PEB continued you on TDRL. On 4 June 2015, the PEB notified the Commandant of the Marine Corps that your retired pay had been terminated, that you had not undergone a final period physical examination, and that, pursuant to DoD Directive 1332.18, you warrant administrative removal from TDRL. You were previously notified on 17 March 2015 that you were being removed from the TDRL due to your failure to attend scheduled PPE appointments.

In your current petition, you request placement on the permanently disability retirement list (PDRL). You contend that your injuries have not improved, you have been rated at 100% by the Department of Veteran's Affairs (VA), and the loss of your retirement has created a financial hardship for your family.

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.

The Board noted you admit to missing your scheduled PPE appointments. The Board further noted that you were instructed of the requirement to receive a PPE while on TDRL and were aware of the requirement based on your previous attendance in 2011. Finally, the TDRL findings also notified you of the requirement to keep Navy Finance Center, [REDACTED] informed of your current address, and that failure to do so may result in loss of pay and benefits if anyone is unable to contact you at that address.

As a result, the Board found that the PEB action to remove you from TDRL was proper and in line with regulations requiring TDRL members to be removed from TDRL if they fail to report to periodic physical examinations for just cause. The Board noted you filed your petition nearly eight years after removal from TDRL and found you did not submit adequate justification as to why you were not able to make or reschedule your PPE appointments. Consequently, the Board determined there was no just cause for not complying with examination orders and no injustice exists warranting placement on PDRL. While the Board carefully considered the evidence you submitted in mitigation, after applying liberal consideration to your case, they concluded insufficient evidence of error or injustice exists to reinstate you to the TDRL for a final adjudication or place you on Permanent Disability Retirement List. 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

