



always be relied upon to hold the highest standards in bearing and professionalism.” Among other accolades, your fitness report explained that you were the “epitome of the professional warrior,” and that you pursued “mission accomplishment with a zeal uncommon even in today's battle-hardened Corps. Your reporting senior explained that he “would gladly seek [your] services again in combat.” Your recent prior fitness reports contained similar language, revealing that you were a gifted and fit Marine who enjoyed the admiration of those with whom you served. Indeed, during your service you received numerous personal and unit awards including a Combat Action Ribbon and a Navy and Marine Corps Commendation Medal awarded to you in May 2006, as well as Navy and Marine Corps Achievement Medals, several letters of appreciation, and a meritorious mast. On 11 December 2006, you were released from active duty on the expiration of your required service, and you were assigned an RE-1A reentry code, which meant that you were found to be fully qualified for reenlistment.

You filed a petition with this Board dated 24 March 2023 requesting that the Board change your discharge to so that you receive a medical retirement. By letter dated 11 July 2023, this Board denied your request, finding that you provided insufficient evidence in support of your petition, as follows:

Upon careful review, your service records did not include any findings by your chain of command that you were subject to any limitations on your fitness to service. For example, there did not appear to be a non-medical assessment provided by your commanding officer describing your physical limitations of service. In addition, there is no indication that, while you were on active duty, you were referred to be reviewed by a medical board for an examination of any unfitting conditions. To the contrary, your fitness reports and other service record documents demonstrate that you were a fit Marine, held in esteem by your chain of command, who described you as a “top Marine” recognized for your effectiveness. You were, in fact, recommended for reenlistment. The Board observed that you would not have been recommended for reenlistment if you were not fit for service at the time of your separation. Therefore, in applying liberal consideration, the Board observed that even assuming your asserted diagnoses were evident during your active service, such diagnoses did not impact your fitness for service. And, as noted, your review by a medical provider approximately two months prior to your separation specifically indicated that you had no psychiatric illness for which you could be medically boarded.

In your petition for reconsideration of this foregoing denial, you provided additional argument and information that you contend supports your position that your prior petition should be granted. Specifically, you argued you received contradicting diagnoses of post-traumatic stress disorder between your active duty evaluations and the evaluations you received post-service. In addition, you argued that you were, in fact, unfit for active duty while you were in-service, and you provided amplifying information that you contend supports your argument.

As it did before, 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. In its prior decision on your petition, the Board explained 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.

Upon careful review of the material that you provided in support of your request for reconsideration, the Board determined that you did not provide sufficient evidence that you had an unfitting condition during your active duty service. For example, you did not provide medical evidence that supported your contention that you were, in fact, unfit while you were in service. With respect to your reliance, again, on post-service findings by the Department of Veterans' Affairs, the Board explained in its prior decision that such evidence is not persuasive because 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. In sum, the Board concluded that additional evidence, contemporaneous to your service, would be required for it to determine if such evidence demonstrates that you were in fact unfit during service. 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,

10/28/2023

