



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. 6557-23
Ref: Signature Date

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Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to Title 10, United States Code, Section 1552. 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 was 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 19 October 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 27 April 1987. On 31 March 1995, you were released from active duty and transferred to the temporary disability retired list (TDRL). On 21 January 1998, the President of the Physical Evaluation Board (PEB) wrote to the Commandant of the Marine Corps and reported that you were found to be unfit at a level of 20% and that you were to be separated with severance pay but without any other disability benefits. On 5 February 1998, you were notified of the PEB's findings and that you would be removed from the TDRL effective 1 March 1998. You were separated on 1 March 1998 and paid separation pay.

In your petition, you request that your removal from the TDRL be changed to a service disability retirement. In support of your request, you contend that, while at your PEB, your lawyer told you and your wife that the PEB was offering you discharge with severance pay, but that you would retain your retirement status for DEERS purposes. You also provided a statement from your wife, who explained that you would have TRICARE for life and base privileges, but that you would not receive retirement pay. You further assert that you were able to use these

privileges with no problems for over 25 years including TRICARE for your family and that you were told that you would receive these benefits for life.

In its review of your petition, and the entirety of the materials you provided, the Board did not agree with your rationale for relief. In reaching its decision, the Board observed that your available records do not contain support for your request, and you did not provide any supporting documentation to substantiate your claim. The Board observed that the available documentation demonstrates that you were appropriately removed from the TDRL after your disability level had improved to a level that was less than 30% and thereafter separated with severance pay. The Board noted you do not argue or present evidence that the PEB decision was erroneous, thus the Board determined insufficient evidence of error or injustice exists to place you on the 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,

11/17/2023

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