



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

■
Docket No. 7492-23
Ref: Signature Date



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.

A three-member panel of the Board, sitting in executive session, considered your application on 9 November 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. The Board also considered the 2 October 2023 advisory opinion (AO) from the Wounded Warrior Regiment.

The Board determined that a 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 enlisted in the Marine Corps and completed an initial period of active duty training from 7 February 2011 to 16 December 2011, whereupon you continued service in the Marine Corps Reserve. On 1 December 2021, during a period in which you were not on active duty or on a qualifying period of reserve duty, you received a COVID vaccine at a civilian facility. At the time you received the vaccine, you had a pending request for a religious exemption from receiving the vaccine. According to your petition, the same day that you received the vaccine, you experienced symptoms of a reaction, and you contend that you suffered injuries as a result of receiving the vaccine. Thereafter, you requested Line of Duty Benefits (LODB), contending that the injuries that you experienced after receiving the vaccine should be considered a duty injury. On 31 October 2022, the Reserve Medical Entitlements Section recommended that your request for LODB be denied, as follows:

I have carefully reviewed the medical information made available to me regarding the appeal to the denial of line of duty (LOD) benefits for [Petitioner]. [Petitioner] obtained the Johnson and Johnson COVID-19 vaccination while not on orders. Since that time he has developed medical symptoms that he believes are related to the vaccination. The LOD request was received . . . via the Marine Corps Medical Entitlements Data System (MCMEDS).

* * *

A review of pertinent documents revealed that [Petitioner] received the Johnson and Johnson COVID-19 vaccine on 01Dec2021. He was not in any active military status at that time. Since, he has seen a number of medical providers to discuss ongoing complaints that he believes stemmed from the vaccine.

In summary, [Petitioner] had every right not to obtain the COVID-19 vaccine but chose to do so during a time when he was not on reserve orders of any kind. Therefore, per reference (a), I recommend denial of LOO benefits for any conditions that may have arisen in relation to his vaccination. Unless [Petitioner] has been found fit for duty by a military physician, the service member should be in a TNPQ status. As advised in references (b) and (c), it is recommended that the Inspector-Instructor submit a Medical Retention Review package for this service member.

On 1 December 2022, you appealed the denial of your LODB request, stating that you received the COVID vaccine from a civilian provider, “as ordered by MarAdmin 462/21.” You further asserted that you were hospitalized the day you received the vaccine. On 16 January 2023, the Wounded Warrior Regiment recommended that your LODB appeal be denied, as follows:

In performing the medical case review (encl. 25), the Senior Medical Officer (SMO), RMED, reviewed the case and recommended the appeal be denied for the following reasons: The member was not in any active military status at the time he received the Johnson and Johnson COVID-19 vaccine on 1 December 2022. The member had every right not to obtain the COVID-19 vaccine but chose to do so during a time when he was not on reserve orders of any kind.

Per enclosure (38), the member was directed to receive the COVID-19 vaccination unless medically or administratively exempt. Per enclosure (1), the member initiated an exemption to the policy on 1 November 2021, however he changed his mind and elected to receive the COVID-19 vaccine on 1 December 2021.

Per enclosures (39) and (40), the member must be in a duty status to receive required immunizations. Per enclosures (34), the member's unit setup two separate COVID-19 vaccination opportunities for the drill periods of 5 November 2021 and 3 December 2021.

Despite the requirement to use both monthly, scheduled, paid and non-paid Inactive Duty Training (IDTs) to receive the vaccination at civilian or military sites, the member went on his own accord and received the COVID-19 vaccine at a civilian medical treatment facility which is a violation of enclosures (39) and (40).

In summary, the RMED section recommends denial of LOD benefits on the primary basis the member was in direct violation of the specific COVID-19 policies and was not in a duty status at the time he voluntarily elected to receive the COVID-19 vaccination.

On 13 April 2023, your request for LODB was denied by the Administrative Law Division of the Office of the Judge Advocate General (Code 13), as follows:

Per reference (c), Reservists who incur illnesses or diseases during periods of active duty or aggravate pre-existing conditions as a direct result of Reserve service may be eligible for LODHC benefits. Reference (c) defines “incurred” as “Came into being, regardless of when discovered or diagnosed. The date or time of onset, when an injury, illness, or disease is contracted.” Reference (c) defines “aggravated” as “The worsening of a preexisting medical, dental, or behavioral condition over and above the natural progression of the condition as a direct result of military duty.”

* * *

Therefore, the medical record does not prove, by a preponderance of the evidence, that your knee pain, heart issues, breathing issues, muscle pain, fatigue, or headaches were incurred on or aggravated by active duty Reserve service. Accordingly, your claimed conditions are not eligible for LOD-HC benefits under reference (c) and your appeal must be denied.

In your petition, you seek to be awarded LODB as well as a service military retirement. In support of your petition, you contend that you were injured as a result of the COVID vaccine, and that you only received the vaccine because you were required to receive the vaccine due to Marine Corps policy.

In order to assist it in reviewing your petition the Board obtained the 2 October 2023 AO. According to the AO, your petition did not include the entirety of your LODB appeal file, and the AO explained that Code 13 denied your LODB request and attached a copy of the Code 13 denial letter to its response. The AO explained further as follows:

The majority of the documents provided in the member's BCNR package were previously reviewed via the member's initial LOO benefits request and the member's appeal request for the denial of his initial LOO benefits request. The few new documents provided in the member's BCNR package include: A letter from the Office of United States █, Cardiology visit notes dated 28 April 2022, Cardiac Monitor note dated 24 February 2022, and █ clinic neurology letter dated 27 June 2022. The documentation provided

does not provide any new information that would change the BIAs [Benefit Issuing Authority] original disapproval decision.

You provided a response to the AO on 1 November 2023, which included a personal statement. In your personal statement, you provided background information on your military service as well as your medical treatments. You explained that your unit has placed you in Medical Readiness Review. On this latter point, documentation available to the Board reflects that you are still in the Marine Corps Reserve.

The Board reviewed your petition and the material that you provided in support, and disagreed with your rationale for relief. In reaching its decision, the Board observed that service members are entitled to medical treatment for disability conditions that are incurred or aggravated while in a qualifying duty status. In its review of the entirety of your petition and supporting material and all available documentation, the Board determined that there was insufficient evidence that you incurred or aggravated an injury while you were in a qualifying duty status. In that regard, the Board substantially concurred with the findings of the decision by Code 13 on your appeal, as well as the AO, which explained that the documentation you provided “provided does not provide any new information that would change the BIAs original disapproval decision.” Thus, in its review 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, _____

11/24/2023

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Executive Director

Signed by: █