



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

█
Docket No. 7511-23
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 16 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, applicable statutes, regulations, and policies, to include the Kurta Memo.

The Board determined that your 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 entered active duty in the Marine Corps on 15 October 2002. In 2005, you deployed in support of █. On 6 October 2005, you were seen by a social worker for alcohol use. You were found psychiatrically fit for full duty and referred for outpatient therapy. In January 2006, you underwent surgery on your left foot and you were placed on limited duty for six months. On 14 August 2006, you were discharged to attend school. A 27 September 2007 medical examination notes that you were rated by the Department of Veterans Affairs (VA) for post-traumatic stress disorder (PTSD) at 10%. In addition, the record notes disqualification for Left foot hallux valgus surgery, PTSD, and TBI, but does not contain any other clarifying details. You were discharged from the US Marine Corps Reserves in July 2010. On 5 April 2016, you were awarded the Purple Heart for a TBI/concussion suffered in action on 27 May 2005.

For your petition, you contend that your PTSD and TBI conditions rendered you unfit for duty. You contend that you were involuntarily recalled in 2007 but deactivated due to your PTSD, TBI, and foot condition. You argue that had you been properly evaluated you would have received a disability discharge. You included your VA rating and some in-service medical records to support your request.

The Board carefully reviewed your petition and the material 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.

Regarding your request for a disability discharge, the Board found there was insufficient evidence that you were suffering from an unfitting condition prior to discharge on 14 August 2006. The Board noted you were promoted to Sergeant on 1 January 2006 and had meritorious service up until separation. The Board did not find your argument that you suffered from a disability at the time of your discharge persuasive as you were not on limited duty for TBI or a mental health condition while in-service. In addition, the Board noted you were medically cleared to separate, and have a reentry code of RE-1A; documenting that you were recommended and eligible for re-enlistment. There is no evidence that you were found ineligible to re-enlist as you stayed in the inactive ready reserve until your discharge on 2010. Moreover, the Board noted your argument for a medical discharge is based on the VA decision to issue you service connected disability ratings. The VA issues disability ratings without regard to fitness for continued naval service; a finding that is required under Navy disability regulations in order to qualify for a disability rating from the Marine Corps. In sum, in its review and liberal consideration 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,

12/14/2023

