



**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. 7529-23  
Ref: Signature Date

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Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to 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.

A review of your record shows that you entered active duty in the United States Marine Corps on 24 January 2000. In October 2000, you suffered a right knee dislocation. On 31 January 2002, you underwent a medical evaluation board (MEB) due to continued problems with the right knee. On 4 March 2002, the Physical Evaluation Board (PEB) found you unfit for continued service for the right knee with a 10% rating, warranting separation with severance pay. You did not appeal the decision and you were discharged, on 30 April 2002, with an Honorable characterization of service. Your Certificate of Release or Discharge from Active Duty (DD Form 214) states disability, severance pay as the narrative reason for separation and a reentry code of RE-3P.

On 22 March 2012, the Physical Disability Board of Review reviewed your case and noted under new regulations you warranted a rating of 20% for your knee condition under two Veterans Affairs Codes at a 10% rating. On 2 April 2012, Assistant General Counsel Manpower and Reserve Affairs approved the record change of a 20% rating for your knee condition.

For this petition, you request a medical retirement based on Post-Traumatic Stress Disorder (PTSD). You claim you incurred PTSD as a result of a non commissioned officer's actions which caused you to injure your knee. You included a rating decision from the Department of Veterans Affairs (VA), showing the VA rated you for PTSD at 70% effective 6 March 2020.

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. These included, but were not limited to, your contention that you deserve a medical discharge because at the time you were discharged you suffered from a mental health condition.

In reaching its decision, the Board observed that in order to qualify for military disability retirement, a medical provider refers a service member to the disability evaluation system if they believe the member has a condition that prevents them from continued service. In this process, the service member has to be found unfit; meaning there must be evidence the service member is unable to perform the duties of their office, grade, rank or rating as a result of a qualifying disability condition. In reviewing your record, the Board concluded there is no evidence that you were treated or diagnosed with a mental health condition while in service. Instead, the evidence supports that a medical board found you were unfit for the condition of your right knee, that you accepted the finding that you were unfit for your right knee, and you were ultimately discharged for that condition. Finally, the Board was not persuaded by your VA evidence. First, the Board noted your PTSD was rated approximately eighteen years after discharge. Second, the Board noted 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 light of the foregoing standard applicable to the DES, the Board did not discern any facts that would support you being eligible for a disability retirement based on PTSD. Rather, the evidence of record demonstrates that you were discharged after failing to recover from a right knee condition that warranted separation with severance pay, not retirement. 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,

12/10/2023

