



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. 8072-23
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 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 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.

A review of your record shows that you enlisted in the Marine Corps and commenced a period of active duty on 27 January 2000. You received nonjudicial punishment, on 4 August 2000, for holding down and duct taping a fellow Marine to his rack. On 26 September 2000, your commanding officer directed you to be seen by a medical professional to assist you in meeting weight control standards. On 21 February 2001, you received a written warning concerning your weight control failure. On 12 April 2001, you received nonjudicial punishment for drinking under age and for conspiring to alter your ID card. On 19 November 2002, you were notified of the initiation of administrative separation processing due to weight control failure. On 5 December 2002, you underwent your separation physical, and there is no indication contained in available medical records that you were referred to a medical evaluation board or that you had any potentially unfitting medical conditions. Thereafter, your squadron commanding officer, as well as your group commanding officer, endorsed recommendations to the separation authority that you be discharged. On 20 December 2002, the separation authority informed the Commandant of the Marine Corps that you would be separated due to weight control failure. You were so separated on 14 January 2003.

In your petition, you request that your discharge be changed to a medical disability retirement. In support of your request, you contend you were recommended for a medical discharge while in service. You also assert that your medical records reflect you were having knee and hip problems for most of your time in service.

The Board carefully reviewed all of your contentions and the material that you submitted in support of your petition, and the Board disagreed with your rationale for relief. In reaching its decision, the Board observed 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 or 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.

In reviewing your record, the Board concluded the preponderance of the evidence does not support a finding that you met the criteria for unfitness as defined within the Disability Evaluation System at the time of your discharge. Weight control failure is not a disabling condition as set forth in the disability evaluation system. Further, the Board observed no evidence that you had any unfitting condition while on active duty, including any conditions of the knee or hip that were deemed unfitting by any medical professional. In light of the foregoing standard applicable to the Disability Evaluation System, the Board did not discern any facts that would support you being eligible for a disability retirement. Rather, the evidence of record demonstrates that you were discharged after you were deemed to have failed weight control standards. 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

