



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. 8138-23
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 Board found it in the interest of justice to waive the statute of limitations and consider your application on its merits. 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 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 28 September 1972. On 16 January 1973, you received nonjudicial punishment for being disrespectful to a sergeant. On 11 October 1973, you received nonjudicial punishment for unauthorized absence, disrespectful in language to senior noncommissioned officer, and disobedience of a lawful order. On 26 November 1973, you were convicted by a special court-martial for a period of unauthorized absence in excess of thirty days and for three instances of disobeying an order/disrespect. On 13 May 1974, you received nonjudicial punishment for failing to be at your appointed place of duty. On 28 May 1974, you received nonjudicial punishment for failing to sign in for extra duty on two occasions, failing to obey an order, and for failing to be at your appointed place of duty. On 6 November 1974, you requested to be discharged for the good of the service in lieu of a trial by court-martial. On 21 January 1975, you were discharged with an Other Than Honorable (OTH) characterization of service.

On 2 April 1975, the Naval Discharge Review Board (NDRB) denied your application for an upgrade of your discharge characterization.

In your petition, you request that the Department of Veterans' Affairs (VA) reinstitute health care benefits. In support of your request, you contend that you are fully disabled and receive dialysis treatment from a VA doctor. You also assert that you "carry a bullet" from when you were inadvertently shot by another Marine while in service.

The Board reviewed your petition and the material that you provided in support, and found that there was no basis for relief. At the outset, the Board noted that it cannot grant you the relief that you seek. Specifically, the VA is a separate government agency and makes its own decisions with respect to individual veterans' requests for health care. With respect to this aspect of your petition, the Board denied your request as outside of its statutory authority to review.

To the extent you seek military disability benefits based on your assertion that you were shot by a bullet while on active duty, 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 (DES) 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.

The Board concluded the preponderance of the evidence does not support a finding that you met the criteria for unfitness as defined within the DES at the time of your separation. In its comprehensive review of the entirety of your request, the Board determined that there is no evidence in your available records, and you provided none, that you suffered any unfitting condition within the meaning of the DES when you were on active duty whether as a result of a bullet wound or by any other means. In other words, there is nothing in your service record that reflects you were unable to perform your duties due to any medical condition. In fact, the proximate reason for your discharge was your misconduct, not an inability to perform your duties based on an unfitting condition. On this point, the Board observed that your service record reflects that you received nonjudicial punishment four times, were convicted by a court-martial, and you ultimately requested to be discharged in lieu of facing another trial by court-martial. 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,

12/4/2023

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