



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. 9548-23
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 11 January 2024. 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 completed officer candidate school and accepted a commission into the United States Marine Corps Reserve. You served on active duty as a military police officer from 3 October 1999 until 15 September 2003. You returned to active duty, on 8 January 2004, deploying to █ in support of Operation Enduring Freedom. On 21 July 2004, you sustained a level 3 concussion and loss of consciousness from an explosion. You received a Navy and Marine Corps Commendation Medal for your actions serving as Platoon Commander from 15 February until 7 September 2004. You were released from active duty on 28 October 2004 and received an Honorable characterization of service. On 1 June 2005, your record shows you received the Purple Heart for the July 2004 incident. On

1 December 2005, you mobilized on active duty and subsequently deployed to [REDACTED] for a second tour ending in November 2006. You were discharged on 30 November 2006 with an Honorable characterization of service and transferred to the Individual Ready Reserve on 2 December 2006. On 30 June 2008, Marine Corps Mobilization Command notified you of transfer to the Inactive Status List for failing to obtain the required reserve retirement points during your last anniversary year. You were involuntary discharged from the Marine Corps Reserve effective 1 June 2012. Your record indicates you did not serve on active duty nor completed drill periods after November 2006.

For your petition, you contend you were not properly medically screened upon completion of your combat deployments in 2004 and 2006. You argue that you incurred several conditions on active duty to include Post-Traumatic Stress Disorder (PTSD) and Traumatic Brain Injury (TBI), which should have been evaluated prior to your separation. You argue that had these conditions been properly evaluated you would have received a medical retirement. You request a retroactive medical retirement, placement on the Permanent Disability Retirement List, due to TBI and PTSD. You submitted Department of Veterans Affairs (VA) medical records and letters from Marines you served with to support your claim.

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.

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 (DES) 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 the evidence does not support a finding that, when you discharged in 2006, you were unable to perform the duties of your office grade and rank, in fact, there was ample evidence to the contrary.

Regarding your claim that you were not properly evaluated post your combat tours, the Board observed after your first deployment in 2004 you returned to active duty and successfully completed another tour and, after your 2006 tour, you passed a medical examination to discharge from active duty. In addition, in a 13 July 2007 mental health examination, seven months post-service discharge, the medical provider stated you did not meet the criteria for PTSD, your “symptoms do not appear to interfere with [your] ability to safely do your job as a DEA agent,” that your symptoms appeared “relatively mild at this time,” and diagnosed you with adjustment disorder with anxiety. In addition, the Board determined you were able to perform very similar military police duties post discharge from the Marine Corps; further evidence that you did not have an unfitting condition in 2006. Post discharge medical records, to include a 25 September 2013 examination, documents you worked for the Department of Justice in hostage rescue and

were the assistant team leader for an 8-person team that served tours in [REDACTED], [REDACTED], and [REDACTED].

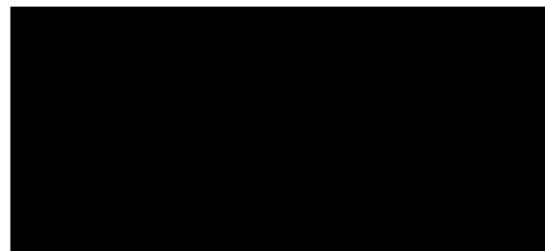
Finally, the Board noted your argument for a medical retirement is based on the VA decision to issue you service connected disability ratings. The Board was not persuaded by your VA evidence since eligibility for compensation and pension disability ratings by the VA is tied to the establishment of service connection and is manifestation-based without a requirement that unfitness for military duty be demonstrated. The Board noted you did not provide any in-service medical records documenting in-service treatment for a mental health condition or cognitive difficulties.

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. Rather, the evidence of record demonstrates that you were discharged after successfully completing your active duty obligation and that, in 2006, you were medically eligible to continue your Marine Corps Reserve career. 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,

2/1/2024

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