



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. 9893-23
Ref: Signature Date

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Dear Petitioner:

This is in reference to your reconsideration request 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 14 December 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 entered active duty service with the Marine Corps on 6 December 2005. On 8 March 2010, you received an Administrative Remarks (Page 11) 6105 counseling concerning your recent assignment to limited duty. You were counseled for being late to work and sleeping at work on 18 March 2010 and 8 April 2010. On 27 April 2010, you received another 6105 counseling for violation of Article 92, Uniform Code of Military Justice, for not contacting your mentor. Your not-observed fitness report covering the period 15 May to 15 July 2010 noted that you performed a first-class physical fitness test. Your fitness report covering the period 16 July 2010 to 26 October 2010 noted you scored a first-class combat fitness test, that you were "always exceptional at physical fitness" and that you stay "in excellent physical condition." The latter fitness report also noted that you were "unable to participate in many events due to [your] lack of security clearance." On 2 November 2010, your Career Planner's End of Active Service Interview states that you were returned to full duty and cleared for continued service by a medical board, but that you planned on going to school and becoming an automotive mechanic. Although your Commanding Officer did not recommend your reenlistment due to "[a]ll circumstances [dealt] with this Marine and his medical past," you were ultimately released from active duty in the Marine Corps on 5 December 2010 at the completion of your required active service with an Honorable characterization of service and a favorable reentry code of RE-1A (eligible and recommended for reenlistment).

In 2014, you were diagnosed with Restless Legs Syndrome. In 2016, your doctor determined that your symptoms met the criteria for fibromyalgia. In 2018, you submitted a petition to the Board requesting medical retirement for fibromyalgia. You claimed that had you been diagnosed while in-service you could have been treated properly and continued service or you would have been medically retired. The Board denied your request, stating there was insufficient evidence of you being unfit for duty due to a medical condition at the time of discharge highlighting your strong performance as noted in your last fitness report prior to your separation.

For this reconsideration request, you contend you warrant medical retirement due to your fibromyalgia and asthma conditions. You argue that the medical board in 2010 made an error of finding you fit for duty and that your asthma and undiagnosed fibromyalgia caused you to have inconsistent performance and resulted in your Company Commander not recommending you for re-enlistment. You submitted letters from Marines you served with during active duty and medical records from in-service and 2020 in support of your contentions.

The Board carefully considered your request, and after thorough review, the Board disagreed with your rationale for relief. Specifically, the Board found no evidence that you suffered from an unfitting physical condition while on active duty. The Board again noted that in order to be found unfit for continued naval service, a service member must be unable to perform the duties of their office, grade, rank or rating due to a disability condition incurred or aggravated while on active duty. The Board noted that your fitness report ending 26 October 2010 states that you were in excellent physical condition and able to perform the duties assigned, noting that you “excelled at certain aspects of [your] billet” and “[w]hen acting as BDCP Training and Administrative NCO [your] work was outstanding.” The Board noted that you were unable to fully execute your billet due to lacking a security clearance, not a medical condition. Moreover, the Board found evidence contrary to your contention that it was your medical condition, which prevented you from re-enlisting in the Marine Corps. The Board noted in your last observed fitness report your Reviewing Officer stated that your “promotion and retention hinge upon [you] regaining your security clearance.” Finally, the Board noted that your letters of support and medical records ten years post-discharge were not material and did not support a finding of unfitness at the time of your separation, nor did your evidence support a finding that the medical board erred when it returned you to full duty status while you were on active duty. Accordingly, the Board did not find evidence sufficient to show an error or injustice regarding your discharge and 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,

1/11/2024

