



**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. 10240-23  
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 22 February 2024. The names and votes of the panel members 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, to include the Kurta Memo, the 3 September 2014 guidance from the Office of the Secretary of Defense concerning discharge upgrade requests by Veterans claiming post-traumatic stress disorder (PTSD) (Hagel Memo), and the 24 February 2016 guidance from the Principal Deputy Under Secretary of Defense concerning discharge upgrade requests by PTSD or TBI (Carson Memo), (collectively “the Clarifying Guidance”).

A review of your record shows that you enlisted in the Marine Corps and commenced active duty on 20 July 1978. Thereafter, you continued in active service, executing interim reenlistments, until your completion of required service on 20 June 1991. Although your date of affiliation with the Marine Corps Reserve is not set forth in your service record, you have indicated that you affiliated with the Marine Corps Reserve immediately after your release from active duty, which was 21 June 1991. According to your petition, you underwent surgery on 14 July 1994, which rendered it impossible for you to drill in the Marine Corps Reserve.

On 21 June 1996, Chief, Bureau of Medicine and Surgery (BUMED), found you to be Not Physically Qualified to remain in the Marine Corps Reserve. The letter from BUMED is not available in your service record, but it is discussed in an advisory opinion (AO) that was obtained in response to one of your earlier petitions to this Board. According to that AO, the letter from BUMED indicated that you were “NOT physically qualified for retention in the Marine Corps Reserve because of personality traits, possible underlying paranoia, laminectomy at CS-6 with fusion. A waiver of the physical standards IS NOT recommended.” On 1 October 1996, you completed your election of options form, which informed you that you were found not physically qualified, and you opted to seek an informal PEB. On 20 March 1997, the PEB terminated your case. You were thereafter discharged from the Marine Corps Reserve, on 19 June 1999, due to being not physically qualified (NPQ).

In 2018, you filed a Petition with this Board in 2018, seeking a disability retirement. On 10 April 2020, the Board informed Petitioner by letter that it had denied his petition, as follows:

In your application to the Board, you state that you have twice, prior to this present application, sought relief from this Board on these identical issues. In your current application, you seek correction to your record to reflect an early medical retirement or medical discharge, or, in the alternative, an early military retirement with credit for 17 years of total service. You also ask for a reexamination of your military and service treatment records to include injuries suffered in October 1980. You assert that your condition was incorrectly determined to exist prior to enlistment, seek a finding that your in-service injuries were misdiagnosed and mistreated, and ask that the Board conclude that all of your injuries incurred while you were on active duty and entitled to basic pay. You submit the expert medical opinion of two of your treating neurosurgeons, which, you contend, contradicts the single piece of evidence on which the Board has previously based its denial of relief. You provide personal statements from your mother and former spouse regarding the onset, severity, and nature of your injuries. You also assert, in part, that the PEB’s decision to terminate your case was arbitrary and capricious.

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The Board, like the AO, noted that you completed active duty, received an RE-1A, and successfully drilled for two years in the Marine Corps Reserve. Even in consideration of your assertions in the memorandum that accompanied your application and the new evidence provided, the Board concurred with the AO’s findings. The Board noted that your performance of duty was judged to be adequate at the time of your separation from active duty and that the condition for which you were found not physically qualified while in a Reserve status did not manifest as significantly impairing your duties while you were entitled to basic pay. The Board found that you do not meet the qualifications for a medical retirement or disability discharge under SECNAVINST 1850.4 series.

The Board declined to change the medical documents reflected in your service record, as they accurately reflect the conclusions of the treating medical

practitioners at the time. The Board also determined that, in light of the AO's recommendation, and in consideration of your in-service and post-service medical records, you are not entitled to a finding that your injuries occurred while you were on active duty and/or while you were entitled to basic pay. The Board also concluded that there is insufficient evidence to establish that the PEB acted in a manner that was arbitrary and capricious, as it considered the evidence and provided a reasonable explanation for its conclusion. Finally, upon review of your record and in consideration of your claims of error and injustice, the Board found that your active-duty service and Reserve service do not qualify you for an early military retirement based on 17 years of total service.

You request to be awarded a service disability retirement or alternatively placed in the Integrated Disability Evaluation System (IDES), for post-traumatic stress disorder (PTSD) and neck conditions. In support of your petition, as new matter, you argued that, on 12 February 2020, you were evaluated by the Department of Veterans' Affairs (VA) for PTSD. You argued that that Hagel Memo, referenced above, applies, and that the mental health findings that BUMED observed when it found that you were not physically qualified for service in the reserves was actually pointing out symptoms of PTSD.

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 Clarifying Guidance, 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. 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. Despite its application of special and liberal consideration, the Board observed no evidence that you had any unfitting condition while on active duty. As an initial matter, in its application of the Clarifying Guidance, the Board acknowledged that you had a condition or experience that may excuse or mitigate your discharge, which, at least for the sake of argument, occurred, or was worsened, during your naval service. Next, the Board analyzed whether your condition actually excused or mitigated your discharge. On this point, the Board observed that even assuming, *arguendo*, that the mental health conditions that you exhibited while you were evaluated in the Marine Corps Reserve, there is no indication that any provider contemporaneous to your service found that your condition warranted referral to a medical board for a determination of fitness for duty within the disability evaluation system. Indeed, inasmuch as this mental health condition manifested when you were in the reserve, you would have been

required to obtain a Line of Duty Benefits finding that such condition was incurred or aggravated from a covered period of service. There is no evidence of such documentation in your records, nor have you provided any.

In addition, even assuming, arguendo, that you had diagnoses for PTSD that was incurred or aggravated during a period of covered service, it would not necessarily result in the award of a service disability retirement. Service members routinely remain on active duty with diagnoses of PTSD without those conditions considered to be unfitting. A diagnosis alone is not the standard for the award of a service disability retirement. Rather, as mentioned, to be eligible for a service disability retirement, a service member must have conditions that have been medically determined to be unfitting at the time of service.

Finally, the Board did not find your reliance upon a VA disability finding and rating made twenty years after your discharge to be persuasive, because the VA does not make determinations as to fitness for service as contemplated within the service disability evaluation system. Rather, 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 sum, in its review and liberal consideration of all of the evidence and its careful application of the Clarifying Guidance, 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,

3/11/2024

