



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
701 S. COURTHOUSE ROAD, SUITE 1001
ARLINGTON, VA 22204-2490

[REDACTED]
Docket No. 373-17

DEC 18 2017

[REDACTED]
Dear [REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of 10 USC 1552.

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 for Correction of Naval Records, sitting in executive session, considered your application on 30 November 2017. 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.

Regarding your request for a personal appearance, the Board determined that a personal appearance with or without counsel will not materially add to their understanding of the issue(s) 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 entered active duty with the Marine Corps in October 2000. You injured your back during basic training and were placed in rehabilitation after reporting to the School of Infantry (SOI). On 25 July 2001, you were recommended for administrative separation due to your lower back pain and discharged on 14 August 2001 for condition not a disability. Post discharge, the Department of Veterans Affairs (VA) rated you a combined 100% for a number of service connected disabilities but your back condition was initially rated at 20% in 2002.

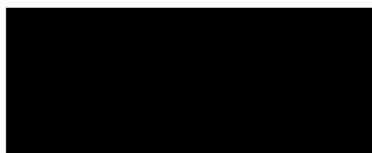
The Board carefully considered your arguments that you were improperly discharged despite suffering from service connected disabilities that were rated a 100% combined by the VA. You assert that you should have been placed on the disability retirement list. Unfortunately, the Board disagreed with your rationale for relief. A service member must be unfit to perform the duties of office, grade, rank or rating because of disease or injury incurred or aggravated while

entitled to basic pay. Each case is considered by relating the nature and degree of physical disability of the member to the requirements and duties that member may reasonably be expected to perform in his or her office, grade, rank or rating. In your case, the Board considered whether you were unable to perform your duties as a basic marine due to your back condition. While the Board determined you were temporarily hampered by your back condition while in the SOI, the Board considered two facts that led them to conclude insufficient evidence exists to find that you were unfit for continued naval service due to a qualifying disability. First, despite suffering your injury during basic training, you were able to complete that course of training before being placed in rehabilitation during SOI. The Board considered this as evidence that you were able to perform the duties of a basic marine during training but that your back condition made doing so uncomfortable. Second, you became a law enforcement officer years after your discharge from the Marine Corps. This convinced the Board that once you were taken out of the training environment and allowed to fully recover, you were physically capable of performing the duties of a basic marine. It is important to note that the mere presence of a medical condition or specific correspondence of any manifestations thereof to an entry indicating a disability rating contained in the VA Schedule for Rating Disabilities is insufficient to warrant either a finding of unfitness for continued naval service or a specific disability rating by the Physical Evaluation Board in the absence of demonstrated duty performance impairment of sufficient magnitude as to render a Service member unfit for continued naval service. By contrast, 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. So despite the disability ratings issued by the VA upon your discharge, the Board felt there was insufficient evidence of occupational impairment at the time of your discharge. Accordingly, the Board was unable to find an error or injustice warranting a correction to your record and denied your application.

The Board determined your requests to make administrative changes to your DD Form 214 were not ripe for Board adjudication. Board regulations require service members to exhaust their administrative remedies prior to applying to the Board. So you may submit your request to the MMRP-13, 2008 Elliot Road, Quantico VA 22134-5030 to request the other changes to your DD Form 214. If you remain unsatisfied with the Marine Corps response to your request, you may reapply to this Board with evidence that an error or injustice exists with your military record.

It is regretted that the circumstances of your case are such that favorable action cannot be taken at this time. You are entitled to have the Board reconsider its decision upon the submission of new and material evidence. New evidence is evidence not previously 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,



Executive Director