



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

Docket No. 789-17
FEB 12 2018

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 25 January 2018. 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. In addition, the Board considered the advisory opinion contained in Director CORB ltr 1910 CORB: 002 of 16 Nov 2017; a copy of which was provided to you for comment.

A review of your record shows that you entered active duty with the Marine Corps in June 1993. You suffered an injury to your back during basic training that was unsuccessfully treated through 1995 when a medical board recommended your referral to the Physical Evaluation Board (PEB) for Mechanical Low Back Pain. On 30 March 1995, you acknowledged the findings of the medical board and chose not to submit a statement in rebuttal. On 19 April 1995, the PEB found you unfit for continued naval service due to your back pain and issued you a 10% disability rating. You accepted the PEB findings on 21 April 1995 and were discharged on 1 July 1995 with severance pay due to your disability. After your discharge, between 1995 and 2011, the Department of Veterans Affairs (VA) has issued you ratings for several service connected disability conditions including a sleep disorder and right lower extremity radiculopathy in 2007 as well as left lower extremity radiculopathy in 2011.

The Board carefully considered your arguments that you were improperly rated by the PEB by their failure to include your sleep disorder and radiculopathy conditions as separately unfitting conditions. Unfortunately, the Board disagreed with your rationale for relief. In making their findings, the Board substantially concurred with the advisory opinion contained in Director

CORB ltr 1910 CORB: 002 of 16 Nov 2017. Specifically, the Board found persuasive the lack of evidence that showed your sleep disturbance created an occupational impairment. While sleep disturbance due to your back pain was noted in your medical records and medical board report, there was no evidence to suggest it was impacting your ability to perform your duties. The Board reached a similar conclusion regarding radiculopathy of your lower extremities. Your medical records and medical board report also mentioned "occasional" pain radiating down your legs but there was no reported numbness, tingling, or weakness in either extremity. This medical evidence convinced the Board any radiculopathy symptoms that existed at the time were insufficient to cause the necessary occupational impairment to warrant a referral to the PEB. Additionally, the fact the VA rated these conditions in 2007 and 2011 did not convince the Board your conditions were unfitting at the time of your discharge since these ratings occurred approximately 12 years after your discharge and were issued without a requirement that unfitness for military duty be demonstrated. Accordingly, the Board was unable to find an error or injustice warranting a correction to your record and denied your application.

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.

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,

A large black rectangular redaction box covering the signature of the Executive Director.

Executive Director