



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

[REDACTED]  
Docket No. 5086-17  
NOV 29 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 2 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.

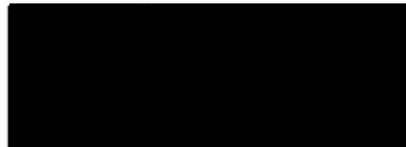
A review of your record shows that you originally entered active duty with the Marine Corps in August 2002 but were discharged for condition not a disability on 29 October 2002. After obtaining a medical waiver for the original disqualifying condition, you reentered active duty with the Marine Corps on 19 October 2004. On 27 October 2004, you were treated for lower back pain resulting from training. A follow-up examination revealed you suffered from Spondylolysis which resulted in a recommendation for an entry level separation. On 16 November 2004, you were discharged for condition not a disability with an uncharacterized entry level separation. Post-discharge, the Department of Veterans Affairs rated your lower back condition at 20% and later increased the disability rating to 40% in 2007.

The Board carefully considered your arguments that you deserve a disability discharge, change to your separation code, and honorable characterization of service. You assert that your condition was not preexisting and this determination has impacted your ability to seek federal employment. Unfortunately, the Board disagreed with your rationale for relief. First, the Board was not convinced that your Spondylolysis condition was not preexisting. This finding is based on your statement to medical providers that was memorialized in the 27 October 2004 medical report in which you stated that you suffered from a history of your back "giving out." This statement led the Board to conclude there was sufficient evidence to support the Marine Corps'

determination that your condition was chronic and preexisted your entry into the Marine Corps. Second, the Board determined that you were properly issued an uncharacterized entry level separation since you were within the first 180 days of continuous active duty and did not meet any of the exceptions for a characterized separation while in an entry level status. Specifically, the Board could not find evidence of unusual circumstances involving personal conduct and performance of military duty that would warrant the issuance of an Honorable characterization since you were on active duty less than 30 days and suffered your injury within one week of entry. The Board did not find difficulties associated with obtaining Federal Veterans preference status as persuasive evidence of an injustice warranting relief in your case since, it appears, you are being treated appropriately according to your correctly assigned discharge status. Additionally, since the Board determined your narrative reason for separation is appropriate, it also concluded that no change to your separation code was necessary. Accordingly, the Board was unable to find an error or injustice warranting a correction to your record and denied your application.

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 solid black rectangular box used to redact the signature of the Executive Director.

Executive Director