



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

Docket No. 5592-17  
DEC 26 2017

Dear [REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of 10 U.S.C. §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 14 December 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 entered active duty with the Marine Corps in June 2002. After struggling with chronic left knee pain that resulted in two arthroscopic surgeries, you were referred to the Physical Evaluation Board (PEB) by a medical board on 21 February 2013 for Tendonitis Patellar. On 17 May 2013, the PEB found you unfit for your left knee condition and rated it at 20% consistent with the Department of Veterans Affairs (VA) assigned rating. You accepted the PEB findings on 23 July 2013 and were discharged on 30 October 2013 with severance pay. A medical report shows you injured your back in a judo session in August 2016.

The Board carefully considered your arguments that you deserve to be placed on the disability retirement list. You assert that your back pain is related to your left knee pain and should have been found unfitting by the PEB. Unfortunately, the Board disagreed with your rationale for relief. Specifically, the Board lacked evidence that your back condition created an occupational impairment at the time of your discharge that prevented you from performing the duties of your office, grade, rank or rating. While the VA assigned you a disability rating of 10% for back disc degeneration as part of the Integrated Disability Evaluation System process, there was no medical evidence that showed the impact of your back condition on your ability to perform your military duties. The fact the VA chose to rate your back condition was not conclusive evidence of unfitness since 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. The Board also considered the non-medical assessment of 23 February 2013 that did not report any occupational impairments due to your back condition. Finally, the Board considered evidence that you were capable of performing judo after your discharge from the Marine Corps. This evidence led the Board to conclude that your back condition was minimally impairing based on the physically demanding nature of the sport. 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 issues 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,



Executive Director