



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

[REDACTED]  
Docket No. 6513-17  
FEB 05 2018

[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 18 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.

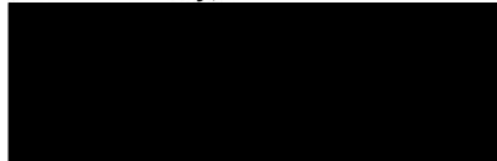
A review of your record shows that you suffered a right ankle and fibula fracture in 1974 after being struck by a vehicle. These fractures were noted on your 22 July 1977 entrance physical however you were medically cleared for active duty. You entered active duty with the Marine Corps on 12 September 1977 but soon complained of ankle pain due to your training. A 9 November 1977 medical board diagnosed you with an unstable right ankle with deformity, healed right ankle fracture, and non-union right fibula fracture; all conditions that preexisted your entry into the Marine Corps based on your 1974 injuries. You acknowledged the medical board findings and were discharged on 14 November 1977 for erroneous enlistment. Post-discharge, the Department of Veterans Affairs (VA) rated you for residuals due to your right ankle fracture at 10% effective 12 April 2017.

The Board carefully considered your arguments that you deserve a disability discharge as a result of your right ankle condition that was rated by the VA as service connected. Unfortunately, the Board disagreed with your rationale for relief. The Board did not find the VA's determination convincing in light of the medical evidence that shows you suffered a severe ankle and tibia fracture prior to your entry into the Marine Corps. Since this was the same condition that led to your administrative separation approximately 60 days after your entry onto active duty, the

Board was convinced this condition existed prior to your entry and was not aggravated by your brief period of service. The fact you accepted the findings of the medical board was additional persuasive evidence that the Navy acted appropriately in your case. Finally, the Board noted that the VA rated your ankle condition approximately forty years after your discharge. This extreme length of time between your discharge the VA rating led the Board to discount the accuracy of the VA's findings. 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 large black rectangular redaction box covering the signature of the Executive Director.

Executive Director