



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

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Docket No. 729-23
Ref: Signature Date

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Dear Petitioner:

This is in reference to your reconsideration request for correction of your naval record pursuant to Section 1552 of Title 10, United States Code. After careful and conscientious consideration of relevant portions of your naval record and your application, the Board for Correction of Naval Records (Board) found the evidence submitted insufficient to establish the existence of probable material error or injustice. Consequently, your application has been denied.

Because your application was submitted with new evidence not previously considered, the Board found it in the interest of justice to review your application. A three-member panel of the Board, sitting in executive session on 18 April 2024, has carefully examined your current request. 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, applicable statutes, regulations, and policies, to include the Kurta Memo. In addition, the Board considered the 5 March 2024 Advisory Opinion (AO) from a licensed physician. Although you were provided an opportunity to respond to the AO, you chose not to do so.

You previously applied to this Board to have your record changed to reflect your disability condition did not preexist your entry into the Marine Corps. The Board denied your request on 24 January 2022. The facts of your case remain substantially unchanged.

For this petition, you request a change of your separation code in order to be eligible for Department of Veterans Affairs benefits, contending that your knee injury occurred as a result of being run over by a car while on active duty. You included a 2 June 1982 hospital narrative summary from █ and a letter from a former Marine you served with while on active duty to support your contention.

The Board carefully considered all factors to determine whether the interests of justice warrant relief in your case in accordance with the Kurta Memo. Based on your assertions, a qualified

medical professional reviewed your request for correction to your record and provided the Board with an AO. The AO stated in pertinent part:

After careful review of the available medical and personnel records, I place great weight on the findings of the MEB, which was convened by the surgeons from the Orthopedic Clinic that had rendered his pre-operative care, performed his May 1982 left knee surgery, and provided his post-operative care and examinations. It would be expected that the members of the MEB would have had access to his complete medical record in the course of providing care, to include his pre-enlistment history and physical examination, and been able to render a determination of EPTE.

The AO concluded, there is “insufficient support for Petitioner’s contention that the MEB erred in determining his unfitting conditions were EPTE.”

After thorough review, the Board concurred with the AO there was insufficient evidence that your knee injury was caused by the automobile accident while on active duty. The Board noted when you were initially placed on limited duty, on 27 April 1982, it stated the knee condition as EPTE. Secondly, you signed documentation, on 15 November 1982, stating the knee condition was EPTE, that you were aware you had the opportunity to rebut this finding at a Physical Evaluation Board (PEB) hearing, and that you waived your right to a hearing. Therefore, the Board determined the documentation you provided does not sufficiently rebut the medical board findings. Accordingly, given the totality of the circumstances, the Board determined that your request does not merit relief.

You are entitled to have the Board reconsider its decision upon submission of new matters, which will require you to complete and submit a new DD Form 149. New matters are those not previously presented to or 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,

5/7/2024

