



**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. 3783-23  
Ref: Signature Date

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Dear Petitioner:

This is in reference to your application 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.

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, sitting in executive session, considered your application on 13 June 2024. 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. The Board also considered the 1 May 2024 advisory opinion (AO) from a qualified medical professional, a copy of which was provided to you. Although you were provided an opportunity to respond to the AO, you chose not to do so.

The Board determined that your personal appearance, with or without counsel, would 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.

A review of your record shows that you enlisted in the Marine Corps and commenced active duty on 20 July 2009. On 7 December 2012, you were in a motorcycle accident, for which you received several surgical procedures. Ultimately, on 19 July 2013, you were discharged at the completion of your required service, for which you received an Honorable discharge and a RE-1A reenry code. After your discharge, you filed for disability compensation with the Department of Veterans' Affairs (VA), which initially rated you at a combined 40% disability rating retroactive to the day after you left active duty, with a 10% rating for status post-fracture.

In your petition, you request a retroactive medical retirement with placement onto the Permanent Disability Retired List, due to injuries sustained from the motor vehicle accident on 7 December 2012. In support of your request, you contend that during your recovery period after your motor vehicle accident, you were not afforded a medical evaluation board or physical evaluation board despite the extent of the injuries you sustained, duration of recovery, and necessary surgeries, which rendered you unable to perform your duties as a United States Marine and required ongoing medical treatment.

In order to assist it in reviewing your petition, the Board obtained the 1 May 2024 AO, which was considered unfavorable to your request. According to the AO:

After review of all available objective clinical and non-clinical evidence, in my medical opinion, at the time of discharge from military service, clinical records indicated he had completed his course of treatment and had been restored to a physical state that rendered him physically qualified for separation from service at the end of his obligated service. Though Petitioner was on light/limited duty during his treatment at [REDACTED] prior to completion of his medical treatment and return to duty, at no point in his treatment did his medical, surgical, or mental health providers consider his condition appropriate for referral to a Medical Evaluation Board (or onwards to the Physical Evaluation Board) for a question of his fitness for continued service. Petitioner planned to continue his mental health care at the VA post-discharge and was also eligible to continue his orthopedic and rehabilitation care at the VA as well.

The AO concluded, “in my medical opinion, the preponderance of objective clinical evidence provides insufficient support for Petitioner’s contention that at the time of his discharge he was unfit for continued military service and should have been medically retired.”

The Board carefully reviewed all of your contentions and the material that you submitted in support of your petition, and the Board disagreed with your rationale for relief. In order to qualify for military disability benefits through the Disability Evaluation System with a finding of unfitness, a service member must be unable to perform the duties of their office, grade, rank, or rating as a result of a qualifying disability condition. Alternatively, a member may be found unfit if their disability represents a decided medical risk to the health or the member or to the welfare or safety of other members; the member’s disability imposes unreasonable requirements on the military to maintain or protect the member; or the member possesses two or more disability conditions which have an overall effect of causing unfitness even though, standing alone, are not separately unfitting.

In reviewing your record, the Board concluded the preponderance of the evidence does not support a finding that you met the criteria for unfitness as defined within the Disability Evaluation System at the time of your discharge. There is no documentation in your service record, and you provided none, tending to support that you had an unfitting condition while you were on active duty. At the outset, the Board substantially concurred with the finding of the AO. Notably, despite your regular evaluation by medical providers while in-service, none of the providers recommended that you be reviewed by a medical evaluation board for referral to the physical evaluation board. In fact, the AO explained that, while you were placed on light duty

during your medical treatment, this did not result in any such referral. Further, there is no indication that anyone in your chain of command provided any non-medical evaluations describing your inability to perform your duties as assigned. In fact, the Board observed that, upon your separation from service, you were assigned a RE-1A, which meant that you were recommended and physically qualified for reenlistment, which is inconsistent with being unfit for future service. 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,

6/28/2024

