



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

█
Docket No. 8906-23
Ref: Signature Date

█
█
█

Dear █,

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.

A three-member panel of the Board, sitting in executive session, considered your application on 27 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. In addition, the Board considered the advisory opinion contained in Headquarters, U.S. Marine Corps, memorandum █ of █.

You were discharged from U.S. Naval Reserve with an honorable character of service and were issued a Certificate of Release or Discharge from Active Duty (DD Form 214) for the period of 31 July 1980 to 6 October 1980 with a Reserve obligation term date of non-applicable.

On 26 April 1982, you enlisted in the U.S. Marine Corps Reserve for 6 years with an end of obligated service of 25 April 1988.

On 11 June 1982, Commandant of the Marine Corps notified you that, “[y]our application for the █ Class has been considered by a board of officers convened at this Headquarters, and it is a pleasure to inform you that you have been selected for participation in the subject program.

Upon acceptance of these orders and on such date as will enable you to proceed and report between 0800 and 1800 on 19 July 1982 [to 27 August 1982] to the Commanding Officer, █, █, █, █, you are assigned to temporary active duty for the purpose of undergoing a physical examination to determine your fitness for assignment to active duty

for training. If found not physically qualified and when directed by the Commanding Officer, ██████████, ██████████, return to place orders are addressed and upon arrival, stand released from active duty. If found physically qualified, you are assigned to active duty for training. When directed by the Commanding Officer, ██████████ ██████████, return to place orders are addressed and upon arrival, stand released from active duty.”

On 21 October 1982, Commandant of the Marine Corps notified you that, “[t]his Headquarters has been notified of your failure to report for the 2nd Increment Course of ██████████ training on 19 July 1982. In view of the foregoing, it is the decision of this Headquarters that you be disenrolled from the program.

In accordance with the provisions of references (b) [MCO P1900.16A] and (c) [MCO P1100.73 Vol.3 (MPPM)], you are disenrolled from the ██████████ Program. The Commanding General, ██████████ ██████████, ██████████, ██████████ is directed to discharge you at the rank of Private from the U. S. Marine Corps Reserve effective 19 July 1982. You are now under no contractual obligation to the U. S. Marine Corps.”

On 8 November 1985, you enlisted in the U.S. Marine Corps Reserve for 8 years with an End of Obligated Service of 7 November 1993.

You were released from active duty and transferred to the U.S. Marine Corps Reserve with an honorable character of service and were issued a DD Form 214 for the period of 27 December 1985 to 11 July 1986 upon completion of required active service.

In accordance with your Reserve Retirement Credit Report, you were in a drill status from 8 November 1985 to 3 April 1990 upon which you transferred to the IRR.

On 31 January 1991, you reenlisted in the U.S. Marine Corps Reserve for 4 years with an end of contract of 30 January 1995, and entered active duty on 4 February 1991.

On 23 January 2007, Commandant of the Marine Corps notified you via Commanding Officer, ██████████, ██████████ that, “[t]he Secretary of the Navy has authorized your physical disability retirement per reference (a). You are transferred to the Temporary Disability Retired List, in accordance with reference (b), effective 1 March 2007.”

In accordance with 10 U.S. Code, section 6330, the Fleet Reserve and the Fleet Marine Corps Reserve are composed of members of the naval service transferred thereto under this section. An enlisted member of the Regular Navy or the Naval Reserve who has completed 20 or more years of active service in the armed forces may, at his request, be transferred to the Fleet Reserve. An enlisted member of the Regular Marine Corps or the Marine Corps Reserve who has completed 20 or more years of active service in the armed forces may, at his request, be transferred to the Fleet Marine Corps Reserve.

In accordance with 10 U.S. Code, section 12731, Except as provided in subsection (c), a person is entitled, upon application, to retired pay computed under section 12739 of this title, if the person—

(1) has attained the eligibility age applicable under subsection (f) to that person; (2) has performed at least 20 years of service computed under section 12732 of this title; (3) in the case of a person who completed the service requirements of paragraph (2) before April 25, 2005, performed the last six years of qualifying service while a member of any category named in section 12732(a)(1) of this title, but not while a member of a regular component, the Fleet Reserve, or the Fleet Marine Corps Reserve, except that in the case of a person who completed the service requirements of paragraph (2) before October 5, 1994, the number of years of such qualifying service under this paragraph shall be eight; and (4) is not entitled, under any other provision of law, to retired pay from an armed force or retainer pay as a member of the Fleet Reserve or the Fleet Marine Corps Reserve.

Application for retired pay under this section must be made to the Secretary of the military department, or the Secretary of Homeland Security, as the case may be, having jurisdiction at the time of application over the armed force in which the applicant is serving or last served.

Notwithstanding section 8301 of title 5, the date of entitlement to retired pay under this section shall be the date on which the requirements of subsection (a) have been completed.

Subject to paragraph (2), the eligibility age for purposes of subsection (a)(1) is 60 years of age.

You were temporarily retired with an honorable character of service and were issued a DD Form 214 for the period of 8 November 1989 to 28 February 2007 due to Disability, Temporary.

On 16 May 2012, Commandant of the Marine Corps notified you that, “[p]er reference (a) [PEB Index No. █ of 17 November 2009], the Secretary of the Navy determined that the condition which placed you on the Temporary Disability Retired List (TDRL) no longer exists and extended you the opportunity to return to active duty. Per reference (b) [Title 10 U.S. Code], you were afforded the opportunity to make an election to return to active/reserve duty or be discharged from the Marine Corps. On 25 March 2012, the █ determined that you did not meet the minimum requirement(S) for reenlistment and disqualified you for return to active duty. Your name will be removed from the TDRL, effective 28 February 2012 and you will be discharged from the U.S. Marine Corps.”

On 14 March 2013, BCNR notified the Secretary of the Navy that the following corrections be made to your record: “That Petitioner’s naval record be corrected to show that he was not discharged from the Marine Corps on 28 February 2012. That Petitioner’s naval record be further corrected to show that he was permanently retired by reason of physical disability effective 1 March 2012 with a disability rating of 30% under Department of Veterans Affairs (VA) code 7199- 7121-6604, for pulmonary embolus and related category 2 diagnoses of dyspnea and deep vein thrombosis.”

On 5 June 2024, Department of Veterans Affairs (VA) notified you that the following periods of service have been verified: 31 July 1980 to 6 October 1980 (U.S. Navy), and 10 July 1985 to 28 February 2007 (U.S. Marine Corps).

You requested that your record reflect that you were retired vice honorably discharged and receive retirement pay starting 1 March 2022, the Board, in its review of your entire record and application, carefully weighed all potentially mitigating factors, to include your assertions. You assert that you should be retired vice discharged. Furthermore, you believe that the Marine Corps should add your reserve time and your active-duty time to show you had enough qualifying years for retirement. The VA letter you submitted as evidence of service lists that you served honorably in the Marine Corps from 10 July 1985 to 28 February 2007, however, the Board determined that the VA letter is incorrect. The dates don't match with your DD Form 214s, and your 3 periods of active service were not continuous. Furthermore, the Board concluded that on 14 March 2013, the BCNR recommended that your record be corrected to reflect that you were permanently retired by reason of physical disability effective 1 March 2012. As of your transfer to the permanent disability retired list, your active service was just over 17 years. Because you did not complete 20 years of active service, you are not eligible to a regular retirement. Finally, you were separated from the active component and not from the Marine Corps Reserve, therefore you are not eligible for a reserve retirement. In this connection, the Board substantially concurred with the comments contained in the advisory opinion.

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,

7/3/2024

█