



**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. 8982-23  
Ref: Signature Date

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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 8 August 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, applicable statutes, regulations, and policies, to include the 25 August 2017 guidance from the Office of the Under Secretary of Defense for Personnel and Readiness (Kurta Memo), as well as the 16 July 2024 Advisory Opinion (AO) provided to the Board by a Licensed Psychiatrist and your rebuttal response.

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 commissioned and started active duty in the Marine Corps on 20 April 2013. On 29 November 2016, you underwent surgery to your left foot for an unstable Lisfranc injury you incurred during a Jet Ski accident. On 16 May 2017, you underwent a second surgery to remove the surgical hardware from your left foot as your Lisfranc fracture had healed. On 26 Jan 2020, you deployed in support of Operation Inherent Resolve until 4 August 2020. On 18 July 2022, you were in a motorcycle accident. You were diagnosed with concussion without loss of consciousness, and pain in the right leg, bilateral knees and right ankle. You were referred to a Traumatic Brain Injury (TBI) Concussion clinic and physical therapy. On 26 September 2022, you underwent right ankle surgery. On 11 October 2022, you started physical therapy which noted decreased range of motion and limited strength to the right ankle and lower extremity.

On 9 November 2022, a medical board report stated “Due to his injury, his ankle will limit his ability to perform duties required of a US Marine... unlikely to return to full duty...no PFT/CFT, no running/impact activities/hiking w pack, etc.” Additionally, you were limited from deployment, overseas assignments, field duty, and combat. You were not selected for promotion for the Fiscal Year (FY) 2022 and FY 2023 USMC Major Promotion Selection Board. Thus, in December 2022 you participated in the Skill Bridge Internship Program, a program for military members who will be transferring to the civilian sector.

On 10 April 2023, you were referred to the Disability Evaluation System (DES) for pain of the right ankle joint. On 19 May 2023, you underwent a psychological evaluation at the Naval Hospital [REDACTED], were diagnosed with Unspecified Depressive Disorder, and found psychologically Fit for full duty. On 6 June 2023, the Commanding General Marine Corps Installations West notified you of your Honorable discharge effective 1 June 2023 for non-selection, permanent promotion. On 29 August 2023, the Department of Veterans Affairs (VA) rated you at 100% for various disability conditions.

For this petition, you requested the Board change your separation to medical retirement and to change your narrative reason for separation from Non-Selection Permanent Promotion to Disability, Severance Pay. You argue it was an error for you to be discharged for non-selection as you were awaiting adjudication of your DES case. You contend your case was mismanaged because, in January 2023, you requested an extension of your end of active service (EAS) date in order to allow your DES case to process, and your command did not submit the request until 2 weeks prior to your EAS; which was subsequently denied. Finally, you contend if the DES case had been allowed to continue you would have been found unfit for your ankle injuries, Post Traumatic Stress Disorder (PTSD) TBI, and scars. You provided VA records to support your contentions.

The Board carefully reviewed your petition and the material that you provided in support of your petition. In keeping with the letter and spirit of the Kurta Memo, the Board gave liberal and special consideration to your record of service, and your contentions about any traumatic or stressful events you experienced, and their possible adverse impact on your service, to include whether they qualified you for the military disability benefits you seek.

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

In my medical opinion, at the time of administrative discharge from military service, Petitioner did suffer from medical conditions that prevented him from reasonably performing the duties of his office, grade, rank, MOS, or rating, specifically Right and Left Ankle Pain. The VA granted service-connection at a 70% disability evaluation for PTSD, TBI, and Vertigo as conditions that arose during, and as a result of, his military service. However, the clinical evidence does not support these conditions as Unfitting at the time of his discharge from service. Navy psychiatrist found him psychologically fit for full duty. Given that providers within the Department of the Navy are required to possess knowledge of expected duties and obligations of Sailors and Marines and render fitness-related determinations as part of their credentialing requirements and

qualifications, I placed greater weight on the evaluations and assessments from the in-service mental health examiners and their readiness expertise.

The medical advisor recommended you be found Unfit for: Right Ankle Pain (rated as Right Ankle Strain, Moderate), VA Code 5271, rated at 10%, and Left Ankle Pain (rated as Left Ankle Strain, Moderate), VA Code 5271, rated at 10%, resulting in medical separation with severance pay.

You provided a rebuttal to the AO, arguing that the AO did not address whether your lower lip scar with paresthesia and right ankle scar, which were rated at 30% by the VA, were unfitting conditions. You again argued that your mental health condition and TBI should also be considered unfitting conditions.

The medical advisor reviewed the rebuttal, and determined the clinical records did not support an Unfit finding for your bilateral ankle surgical scars or lip. The advisor specifically noted that, throughout your orthopedic and other medical evaluations, there is no mention in the clinical history and physical examinations of your surgical scars limiting your function or being considered unfitting. Moreover, regarding your request for additional review of your TBI and PTSD, the medical advisor found the clinical evidence did not support you being Unfit for these conditions, as these conditions were not referred to the Physical Evaluation Board (PEB). Therefore, after careful review and reconsideration, the medical advisor determined the original AO stands as written.

The Board concurred with the AO that there was insufficient evidence that you were Unfit, unable to perform the duties of your office, grade, rank or rating as a result of PTSD, TBI, or your scars. With respect to your claim that your DES case was improperly terminated, the Board noted your case never went through the PEB process. Your referral to DES for only one condition, right ankle pain, was dated 10 April 2023 and less than two months prior to your EAS date. Consequently, Headquarters Marine Corps denied a PEB because you already had a mandatory EAS for twice not being selected to promote. Finally, the Board noted you were discharged due to non-selection, and received pay based on this involuntary discharge. If the Board were to find you Unfit for the ankle conditions, your narrative reason for separation would change from non-selection to disability, severance pay, and you would forfeit the involuntary separation pay and become ineligible for continued service in the Marine Corps Reserve. Per Secretary of the Navy Instruction (SECNAVISNT) 5420.193, this Board is prohibited approval a record correction that would place a Petitioner in a less favorable position. Therefore, despite the recommendation from the AO, the Board declined to change your narrative reason for separation to reflect a disability discharge. Accordingly, given the totality of the circumstances, the Board determined that your requested relief could not be granted.

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,

9/11/2024

