



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. 10402-23
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.

A three-member panel of the Board, sitting in executive session, considered your application on 3 October 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. The Board also considered the 22 August 2024 advisory opinion (AO) from a licensed medical professional, which was considered unfavorable to your request. You were provided a copy of the AO and an opportunity to comment, and you did not provide any response to the AO.

A review of your record shows that you entered active duty in the Marine Corps on 26 March 2003. During a combat deployment, you were exposed to an Improvised Explosive Device (IED) explosion that knocked you unconscious. After treatment, you were released back to duty and completed your combat deployment. You underwent two knee surgeries in 2006 that resulted in your referral to the Physical Evaluation Board (PEB) for Patellar Tendinitis. The PEB found you unfit for continued naval service on 31 August 2006 for bilateral Patellar Tendopathy with Fat Pad Syndrome and assigned you a 10% rating. After you accepted the PEB ratings, you were discharged from the Marine Corps with severance pay pursuant to your PEB findings. You filed a disability claim with the Department of Veterans Affairs (VA) on 7 November 2006. The VA assigned ratings for degenerative joint disease left knee at 10% and degenerative joint disease right knee at 10% effective 1 November 2006.

On 5 April 2011, you applied to the Physical Disability Board of Review (PDBR) to contest your PEB findings. After reviewing your PEB case and assigned VA disabilities, the PDBR recommended increasing your combined disability rating to 20% after determining that your bilateral knee condition should have each received a 10% rating. However, the PDBR also

determined there was insufficient evidence that your other VA rated disability conditions were separately unfitting. The Assistant General Counsel, Manpower and Reserve Affairs (AGC, M&RA) approved this recommendation on 25 May 2012. You were notified of the AGC, M&RA decision on 1 June 2012 and informed this was a final Department of Navy action.

Subsequently, the VA rated you a combined 100% on 30 April 2019. In 2019 you petitioned the Board requesting placement on the Permanent Disability Retired List (PDRL), Docket No. 10023-19. You argued the PEB findings were erroneous based on your current VA rating and asserted that you suffered a perforated right eardrum and loss of hearing that was unfitting. The Board concluded that the preponderance of the evidence did not support a finding that you were unable to perform the duties of your office, grade, rank or rating due to your loss of hearing or perforated right eardrum.

For this petition, you are requesting placement on the PDRL, effective 1 November 2006. You contend the PEB did not consider several conditions to include unstable/painful scars and a moderate rating for arthritis in the knees. You assert that had these conditions been properly assessed as unfitting you would have received a combined disability rating of 60% warranting placement on the PDRL. Specifically, you contend you should have rated at 20% for each knee due to locking up of the knees; 10% for the arthritis of two or more major joints, 10% for right knee pain and 10% for your left knee pain and 10% for your two painful scars.

The Board carefully reviewed your petition and disagreed with your rationale for relief. In reaching its decision, the Board requested an AO from a qualified medical professional. The AO stated in pertinent part:

Petitioner's bilateral knee pain was fully considered throughout his initial presentation for primary care and orthopedic evaluations and treatments (to include surgery on both knees), through his processing in the Disability Evaluation System and subsequent medical separation, through the review of the PDBR (whose review included VA C&P (Compensation and Pension) examinations contemporary to Petitioner's separation).

The Board concurred with the AO that the VA did not service connect the Right Knee Condition (5258-cartilage, semilunar, dislocated with frequent "locking," pain and effusion) at 20% disability, Right Knee Condition (5257-recurrent subluxation or lateral instability of the knee) at 10% disability, Left Knee Condition (5257) at 10% disability, until 10 December 2009, indicating those symptoms did not manifest until after your discharge from service.

Moreover, the Board noted the PDBR had reviewed the bilateral knee conditions specifically and stated "there was no viable approach to a higher rating for either knee which was countenanced by the VASRD" and therefore "had no reasonable basis for recommending any additional unfitting conditions for separation rating." Finally, the Board noted that the VA granted service-connection for the scars in 2009 at a 0% disability rating noting that it was considered non-disabling even in 2009.

The Board concluded there is sufficient evidence your disability conditions for your bilateral knees were appropriately considered at the time of discharge and your record does not warrant additional 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,

11/7/2024

