



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. 10561-23
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 6 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.

As set forth in a prior letter to you, a review of your record shows that you enlisted in the Marine Corps and served on active duty from 7 June 2004 until 22 February 2015. You transitioned to the Marine Corps Reserve on 23 February 2015. You were mobilized on active duty on 3 April 2019. On 26 August 2019, a Marine Corps Martial Arts Program (MCMAP) Mishap Report detailed an incident in which you injured your left knee during MCMAP training. A 7 November 2019 medical record showed that you complained of left shoulder pain due to a MCMAP training the prior day. On 14 November 2019, you completed a Combat Fitness Test (CFT) with a 235 first class score and, on 30 January 2020, you completed a first class Physical Fitness Test (PFT). You underwent a physical exam for separation on 23 January 2020 and, on 6 February 2020, you were cleared to separate. On 4 March 2020, you were discharged from active duty orders and assigned a RE-1A reentry code.

On 5 August 2020, you accepted annual training (AT) orders; you subsequently went on AT orders from 12 August 2020 to 26 August 2020. On 17 November 2020, you completed the CFT with a 266 first class score. A 7 January 2021 medical record notes that you were being seeing for a possible torn anterior cruciate ligament (ACL). You informed the physician that you had left knee pain for two years but that the left knee pain got worse on 1 January 2021 when you jumped while playing basketball with your daughter. On 22 January 2021, you underwent

surgery, ACL reconstruction. On 23 December 2021, you underwent a Magnetic Resonance Imaging (MRI) which showed an Anterosuperior and posterior inferior lateral tear in your left shoulder. On 3 January 2022, you received a “No Work Until Further Notice” letter from your civilian doctor stating that you were unable to partake in any high impact activities due to left knee surgery on 22 January 2021.

On 8 March 2022, you submitted a request for Line of Duty (LOD) benefits for your left knee and left shoulder. On 31 March 2022, Reserve Medical Entitlements Determination Section (RMED) denied the LOD request noting, “Neither the meniscal tears nor the ACL injuries were discovered until the MRI in January 2021, at which point the service member was not on active orders, and therefore not covered by LOD benefits.” You submitted an appeal to the LOD benefits decision, which included a letter from your commanding officer supporting your request of a LOD determination. On 22 November 2022, the Office of the Judge Advocate General (Code 13) denied your appeal. Code 13 noted that there was no evidence in the record to show that your meniscus tear occurred during your active Naval Reserve service. Code 13 noted that there was evidence to suggest that your meniscal injury occurred in January 2021, when you tore your ACL playing basketball as meniscal injuries commonly occur at the same time as ACL injuries.

Code 13 also countered that there is no medical evidence of a confirmed diagnosis of a shoulder labral tear until December 2021, over two years after the MCMAP shoulder injury. Code 13 noted that seven days after your MCMAP shoulder injury, you conducted a CFT with a first class score and a PFT in January 2020 with a first class score; concluding it is more likely than not that your left shoulder labral tear did not occur in the LOD. Moreover, Code 13 noted you signed a document on 5 August 2020 stating that you did not have any medical limitations that you believed might restrict your performance on active duty or would warrant a light or limited duty status if you accepted a new set of orders.

You previously filed two petitions with this Board relating to your request for an approved LOD determination, enrollment in the integrated disability evaluation system (IDES) and placement on the Permanent Disability Retirement List (PDRL). You filed your first petition in 2023, which was assigned docket number 593-23. The Board informed you it denied your request by letter dated 24 July 2023. In that letter, the Board explained:

The Board carefully reviewed your petition and the material that you provided in support of your petition, and it disagreed with your rationale for relief. In making its findings, the Board concurred with Code 13 and RMED that there is no medical documentation showing that your ACL tear, diagnosed January 2021, and shoulder labral tear, diagnosed in December 2021, were due to the MCMAP injuries reported in August 2019 and November 2019. The Board also noted that you were able to perform two CFTs, a PFT, complete AT orders, and perform drill periods covering 35 days from the time of the MCMAP injuries until your request for LOD benefits in March 2022. The Board concluded the evidence does not support your contention that you aggravated your preexisting shoulder and knee conditions while in the line of duty. Consequently, the Board determined there is no error or injustice in your record regarding denial of LOD benefits and, therefore, found no basis to

grant your request to be referred to the IDES or placed on the PDRL. Accordingly, given the totality of the circumstances, the Board determined that your request does not merit relief.

After your receipt of the letter denying your petition, you filed a petition for reconsideration with this Board, which was assigned docket number 6986-23. In that petition, you asked the Board to take into consideration the LOD process confusion, lack of medical support, and the special circumstances regarding the COVID (coronavirus disease) lockdown and two hurricanes and grant approval of LOD benefits (LOD-B). You asserted that the denials from RMED and OJAG are for LOD-HC medical incapacitation benefits instead of LOD-B. The Board informed you that it denied your requested relief by letter dated 4 December 2023, as follows, with edited format:

The Board took into consideration that your access to medical care was limited in 2020 due to COVID lockdown and the natural disasters. However, the Board again noted that after the MCMAP injuries in August and November 2019, and you completed your active service orders and were discharged in March 2020. During the four months you were on active duty, you did not follow up for medical care for your shoulder or knee and you were not placed on limited activities during that period.

Secondly, you were evaluated for your back pain, foot pain, and knee pain prior to separation in March 2020 and those conditions were specifically deemed as not limiting.

Third, the Board observed you completed two CFTs, a PFT, and AT orders in August 2020, and drill periods until January 2021, without incident.

Consequently, the Board determined you were not limited in performing activities with respect to your office, rank, or rate, until January 2021, after you had an injury playing basketball. In making this finding, the Board again substantially concurred with the decisions and opinions of the Marine Corps Reserve Medical Entitlements Determination Section and Office of the Judge Advocate General (Code 13). Ultimately, the Board concluded the evidence does not support your contention that you sustained injuries in an active status that limited your ability to perform the duties and responsibilities of your rank, rate or military occupational specialty and determined there is no error or injustice in your record regarding denial of LOD benefits.

In your current petition, seek reconsideration of your two previous petitions. In support of your request for reconsideration, you provided a written statement, in which you reiterated that all of the concerns raised in this Board's prior denial letter were meticulously addressed in your prior package and you further assert that there were special circumstances applicable to your situation. The Board carefully considered the material you provided, including but not limited to your written statement, written letters of support, and information concerning a natural disaster and COVID, and it disagreed with your rationale for relief. Ultimately, the Board concluded that you

provided insufficient new matter for the Board to change its prior decisions denying your request. Upon its review of your prior requests and the Board's rationale in each, the Board determined that its prior decisions were rational and were based upon the available evidence, which included the decisions of the RMED and Code 13. Notably, this Board observed that the members of each Board panel that reviewed your petitions, including this current Board panel, were comprised of different members, which totals nine different Board members that have reviewed your petitions, and reached the same decision. In conclusion, based on the foregoing, the Board denied your petition in its entirety.

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.

In the absence of sufficient new evidence for reconsideration, the decision of the Board is final, and your only recourse would be to seek relief, at no cost to the Board, from a court of appropriate jurisdiction.

Sincerely,

6/21/2024

