



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. 10581-23
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.

A three-member panel of the Board, sitting in executive session, considered your application on 18 April 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).

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 entered active duty service on 7 February 2005. You deployed in support of █ (█) from 7 April 2008 to 30 November 2008, during which you earned a Combat Action Ribbon. You subsequently deployed again from 20 February 2012 until 10 September 2012. You were discharged, on 15 January 2014, with an Honorable characterization of service; your Certificate of Release or Discharge from Active Duty (DD Form 214) states "Reduction in Force" as the narrative reason for separation and a reentry code of RE-1A.

Documents in your case file reveal you transferred to the Marine Corps Reserve and received an appointment as a warrant officer. You were mobilized in support of █ from 26 April 2018 until 28 November 2018. On 16 February 2022, the Commanding Officer, █

██████████, ██████████, ██████████ notified you of your placement in a Temporarily Not Physically Qualified (TNPQ) drilling status effective 24 January 2022 for 90 days.

For your petition, you claim you should have received a medical retirement. You state that you received treatment for hip and back pain as well as post-traumatic stress disorder (PTSD) and that these conditions were incurred on active duty. You included civilian medical records documenting hip surgery and treatment for back pain. You request medical retirement and submitted Department of Veterans Affairs (VA) medical records as well as civilian medical records to support your claim.

The Board carefully reviewed your petition and the material you provided in support of your petition and disagreed with your rationale for relief. 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.

In reaching its decision, the Board noted for Reserve service members to be eligible for a disability retirement, their injuries or medical conditions have to be determined to have been sustained or exacerbated while in a duty status via a Line of Duty Benefits (LOD-B) determination. If a Reserve Member is granted a LOD-B for a condition, and a medical provider believes the member's condition prevents them from continued service, then the provider refers the service member to the disability evaluation system (DES). In this process, the service member has to be found unfit; meaning there must be evidence the service member is unable to perform the duties of their office, grade, rank or rating as a result of a qualifying disability condition.

In reviewing your record, the Board noted there is no evidence you received a LOD-B. You provided evidence of being in a TNPQ status in 2022. However, the Board noted NPQ means the injury is not considered to have been incurred on active duty. Moreover, there is no evidence, during your periods of active duty, that a military medical provider believed your condition prevented continued service and no evidence that you were not able to perform the duties of your office, grade and rank due to a medical condition. The Board noted that your TNPQ status occurred more than three years after your release from active duty. Finally, the Board noted your argument for a medical retirement is based on the VA decision to issue you service connected disability ratings. The Board was not persuaded by your VA evidence since eligibility for compensation and pension disability ratings by the VA is tied to the establishment of service connection and is manifestation-based without a requirement that unfitness for military duty be demonstrated.

In light of the foregoing standard applicable to the DES, the Board did not discern any facts that would support you being eligible for a disability retirement. Rather, the evidence of record demonstrates that you were eligible to continue your Marine Corps Reserve career upon your release from active duty. In sum, in its review and liberal consideration of all the evidence, the

Board did not observe any error or injustice in your naval records. 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,

5/14/2024

