



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. 986-24
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 2 May 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, to include the Office of the Under Secretary of Defense for Personnel and Readiness (Kurta Memo).

A review of your record shows that you enlisted in the Marine Corps and commenced active duty on 9 November 2020. On 31 December 2020, you went to medical for bilateral hip pain which was later determined due to lower back pain. You were placed on limited duty for low back pain and underwent treatment and physical therapy. Your back pain persisted and a Medical Board referred you to the Disability Evaluation System (DES)/Physical Evaluation Board (PEB). On 20 September 2023, the Informal PEB found you unfit for low back pain. Subsequently, the Department of Veterans Affairs (VA) assigned a 10% rating to the condition per VA Diagnostic Code 5237. On 21 September 2023, the PEB informed you of the 10% rating for your back pain, and that you would be qualified for severance pay. On 29 September 2023, you accepted the 10% rating, waived the right to request a formal PEB hearing, and to submit new and/or additional information for a VA rating reconsideration. Consequently, you were discharged, on 15 November 2023, with a 10% rating. Your Certificate of Release or Discharge from Active Duty (DD Form 214) states Disability, Severance Pay, non-combat, as the narrative reason for separation.

For this petition, you note that your combined VA rating increased to 100%. The Board surmised you were asking for a medical retirement based on this contention.

In keeping with the letter and spirit of the Kurta Memo, the Board gave liberal and special consideration to your record of service, carefully reviewed your petition and the material that you provided, and disagreed with your rationale for relief. The Board noted when you were referred to the DES, you had a Physical Evaluation Board Liaison Officer and you were counseled regarding your Informal PEB findings. Specifically, you were aware that you had the right to present evidence to request a higher rating for your back condition with the VA prior to your discharge. Moreover, you were aware that you had a right to request additional conditions to be found unfit from the PEB. The Board determined you voluntarily waived the right to submit that information and accepted your findings. Secondly, the Board noted the VA did not increase your rating for low back pain since the 6 December 2023 VA rating decision still shows a 10% rating for low back pain. As you were only found unfit to continue service due to your low back pain, the Board determined there is no error in your record and your additional disability conditions rated by the VA does not qualify you for placement on the Disability Retired list.

Absent substantial evidence to that shows the PEB findings were erroneous, the Board determined the presumption of regularity applies in your case. The Board relies on a presumption of regularity to support the official actions of public officers and, in the absence of substantial evidence to the contrary, will presume that they have properly discharged their official duties. 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,

5/20/2024

