



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. 1231-24
Ref: Signature Date

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Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to Title 10, United States Code, Section 1552. 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 was insufficient to establish the existence of probable material error or injustice. Consequently, your application has been denied.

Because your application was submitted with new evidence not previously considered, the Board found it in the interest of justice to review your application. A three-member panel of the Board, sitting in executive session on 27 June 2024, has carefully examined your current request. 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.

You previously applied to this Board for relief and were denied on 23 March 2023. The facts of your case remains substantially unchanged.

In your original petition with this Board, you requested that your separation from the Marine Corps be changed to a medical retirement. In support of your request, you asserted that you were injured while in service and you were unable to continue your active duty service due to the injury. You also argued that all of your injuries are now considered service connected through the Department of Veterans Affairs (VA) for claims that you made while you were still in the Marine Corps Reserve. Finally, you argued that your separation was not explained correctly, because you were told that the PEB was only available if you had documentation to reverse the MRR decision. In support of your request, you provided documentation that, on 7 April 2021, the VA provided you a letter containing findings of a variety of disabilities, and that, eventually, you were determined by the VA to be 100% disabled.

The Board considered your request on 23 March 2023, and it informed you that it denied your petition by letter dated 11 April 2023. The Board's letter of 11 April 2023 provided a comprehensive explanation of its rationale for denying your petition, as follows, in part:

The Board carefully reviewed all of your contentions and the material that you submitted in support of your petition, and the Board disagreed with your rationale for relief. The Board observed no error or injustice in your record. With respect to your MRR process, the Board observed that you were advised in connection with your discharge, that, in order for the PEB to make a finding of unfitness within the Disability Evaluation System (DES), you, as a reservist, were required to obtain an LOD finding. An LOD finding would demonstrate that your injuries were incurred during a period of active duty or other covered period. In your case, there is no such document in your available record, nor did you provide such a letter. Thus, in the absence of an LOD, the PEB was constrained to determine whether you were physically qualified or NPQ to continue service in the Marine Corps Reserve. Accordingly, in the absence of an LOD finding, you were appropriately not placed into the DES.

Similarly, your assertion that the VA awarded you service connection for disabilities after your service did not persuade the Board these conditions were unfitting at the time of your discharge from the Marine Corps Reserve, nor do they serve to fulfill the requirement of an LOD finding, because 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. As noted, the reason for your discharge was a result of a NPQ finding and not a finding of unfitness with the meaning of the DES. Accordingly, given the totality of the circumstances, the Board determined that your request does not merit relief.

In your current petition, you reiterate that you seek to have your discharged changed to a medical retirement. In support of your request for reconsideration, you argue that you were not properly afforded the evaluations that you needed in order to receive a medical retirement. You explained that you were not removed based on weight and you were forced out without being considered for any of the injuries you received from combat. You further explained that your vehicle sustained an IED blast that left you mentally impacted, which has not been considered, even though the VA has found those conditions to be service connected. In support of your request, you provided an award from a combat mission in October 2012, as well as a 2013 VA finding document.

The Board carefully reviewed all of the material that you appended to your request and it disagreed with your rationale for relief. In its careful review of your arguments and documentation submitted, the Board was unable to discern any documentation to support that you were issued or denied the LOD document that Board described in its prior letter denying your petition. In sum, the Board observed that the documentation that you provided was insufficient to support a change of the Board's previous denial of your petition. 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,

7/15/2024

