



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. 1927-24
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.

Although your application was not filed in a timely manner, the Board found it in the interest of justice to waive the statute of limitations and consider your case on its merits. A three-member panel of the Board, sitting in executive session, considered your application on 1 August 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. In addition, the Board considered the 17 May 2024 Advisory Opinion (AO) from the Reserve Medical Entitlements Determination Section (RMEDS). Although you were provided an opportunity to respond to the AO, you chose not to do so.

A review of your record shows that you joined the Marine Corps Reserve and started initial active duty training on 20 July 2009. You completed training and received an Honorable characterization of service on 10 April 2010.

On 1 March 2013, you were mobilized in support of █
(█) █ (█). On 3 December 2013, you were injured during convoy operations due to an Improvised Explosive Device (IED) striking your vehicle. A separation examination, dated 17 December 2013 and 20 December 2013, stated you had the following medical concerns: left closed tibia fracture, history of concussion, open wound to the scalp, right shoulder pain, left wrist pain, back pain, left knee and left ankle pain, and a concussion. The provider noted you were not Fit for separation from Active Duty; however, you were discharged, on 1 March 2014, with an Honorable characterization of service. Your Certificate of Release or

Discharge from Active Duty (DD Form 214) states Completion of Required Active Service as the narrative reason for separation.

On 11 September 2014, you were counseled that you were approved for participation in the Fiscal Year (FY) 2015 Selected Marine Corps Reserve (SMCR) Early Release Program. On 18 June 2015, RMEDS notified you of Line of Duty Benefits (LOD-B) approval, authorizing medical care, through 5 November 2015, for left ankle, head, left upper arm, neck, and back injuries as a result of the injuries you incurred on 3 December 2013. An update in the Marine Corps Medical Entitlements Data System (MCMEDS) noted you were seen in the orthopedic hand clinic regarding your ulnar nerve and left upper limb and that you were scheduled for a fitness evaluation on 27 October 2013. On 21 November 2015, RMEDS extended the LOD-B through 5 May 2016. Based on your failure to submit additional medical information, a noncompliance letter was sent via certified mail and delivered on 19 January 2016. Since you did not respond, a second noncompliance letter was sent to the same address you provided. Upon receiving no response from you, RMEDS terminated your medical and incapacitation benefits effective 5 March 2016. You were informed that if you wanted your case reinstated, you would be required to submit a request within 60 days and include missing medical documentation.

For your petition, you claim you should have received a medical retirement for the multiple injuries which resulted in a LOD. You contend your LOD medical administrator did not make the proper medical appointments and, due to the numerous errors, you were not properly medically discharged. You included Department of Veterans Affairs (VA) documentation showing you were granted a 100% rating due to service connected disabilities and a letter from a former Marine who served with you to support your contentions. Additionally, the Board noted you checked the "PTSD," "TBI," and "Other Mental Health" boxes on your application but did not provide supporting evidence of these claims. The Board considered that your LOD benefits were limited to your orthopedic injuries resulting from the IED incident.

Based on your contentions, the Board considered the AO from RMEDS. The AO stated in pertinent part:

The member was afforded the opportunity to process through the Disability Evaluation System (DES) in 2015 via his LOD benefits authorization, but due to the member's noncompliance in providing the required monthly medical updates his LOD benefits were terminated. In addition, the member did not submit an appeal request within the required 60-day time limit and it has now been over nine years since the member's LOD benefits were terminated.

The AO concluded, "[a]s the member did not comply with the requirements of the LOD benefits program per reference (e), the RMED section recommends the member not be granted the opportunity to process through the Disability Evaluation System (DES)."

The Board carefully reviewed your petition and the material you provided in support of your petition and disagreed with your rationale for relief. In reaching its decision, the Board substantially concurred with the AO and noted you received RMEDS 2 notifications informing

you of the requirement to provide monthly medical updates to keep your LOD in a compliant status. Moreover the Board took note that you attended some appointments at Walter Reed, so you were in the system and had the ability to receive medical care and send medical updates. The Board further agreed with the AO that you were afforded the opportunity to process through the Disability Evaluation System (DES) but, due to your noncompliance in submitting monthly medical updates, your LOD benefits were terminated. The Board determined there was no error in RMEDS terminating your medical and incapacitation pay benefits based on non-compliance to follow applicable regulations. Further, on the issue of injustice, the Board found you did not provide adequate information to excuse your noncompliance with submitting medical documentation in a timely manner. As a result, 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,

8/23/2024

