



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
701 S. COURTHOUSE ROAD, SUITE 1001
ARLINGTON, VA 22204-2490

█
Docket No. 2750-24
Ref: Signature Date

█
█
█

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 25 July 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.

A review of your record shows that you enlisted in the Marine Corps and commenced active duty on 14 November 2007. During your service, you were referred into the Disability Evaluation System (DES), within which certain of your medical conditions were evaluated by the Physical Evaluation Board (PEB). The PEB prepared a Formal Rationale concerning its decision relating to your fitness dated 1 December 2011. The PEB found that your Systemic Lupus was unfitting at a 60% rating. The PEB also addressed your Chronic Low Back Muscle Strain, Right Trapezius and Group I Muscle Strain, and Left Trapezius and Group I Muscle Strain, which it described as diagnoses 2, 3, and 4. The Board “determined diagnoses 2, 3, and 4 are Category III conditions and do not preclude the continued performance of duties and are not separately or collectively unfitting or contributing to the unfitting conditions for the following reasons supported by the facts in evidence.

On 21 March 2012, President, PEB notified the Commandant of the Marine Corps that you were found to be unfit at a 60% rating due to Systemic Lupus. Thus, on 14 August 2012, you were transferred to the Temporary Disability Retired List (TDRL). On 26 January 2015, while you

were on the TDRL, you were notified that you were to undergo a periodic physical examination (PPE). PPEs are routine for individuals on the TDRL. Thereafter, on 2 April 2015, an Informal PEB determined that your unfitting condition had improved while you were on the TDRL and that your Systemic Lupus rendered you unfit at a 10% rating. That same day, President, PEB, wrote to you describing the findings and informing you that you would be transferred from the TDRL and separated with severance. On 6 May 2015, President, PEB, informed the Commandant of the Marine Corps that you had been found to be unfit at 10% and, as such, you should be separated with severance pay. On 19 May 2015, the Commandant of the Marine Corps informed you that you would be discharged from the TDRL with severance pay effective 1 June 2015, and you were so discharged.

In your petition, you request to change your discharge to state that you were medically retired with a permanent and total disability. You also requested that the Board review your record and correct any false allegations of drug use. In support of your request, you contend that you are currently obtaining biofeedback treatment at your expense, which causes you financial strain. You also contend that you have many health issues that were not identified by the PEB, that include Lupus, Fibromyalgia, Insomnia, post-traumatic stress disorder which includes depression and anxiety, migraines, earaches due to chronic sinus issues, sliding hiatal hernia, pelvic floor dysfunction, irritable bowel syndrome, gastroesophageal reflux disease, loss of proper mobility in left shoulder, hemorrhoid's, occasional fissures, low back issues which affected her hip. You also reported that you have improper alignment in your back and hip, fallen arches, chronic postnasal drip, dry eyes, yeast imbalances regularly, and many side effects from all of these issues. With respect to your request concerning false allegations of drug use, you did not specify which documents require correction.

In its review of your petition, including all of the materials that you provided, the Board disagreed with your rationale for relief. In reaching its decision, the Board observed that it 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. Applying this principle to your request, the Board reviewed documentation within your PEB folder from your time in service through the time of your separation from the TDRL and it did not observe any apparent error or injustice. In fact, the Board observed that your processing through the PEB followed appropriate protocol and that the decisions made by professionals within the DES process made decisions that were rational and supported by substantial evidence. In its review of all of the materials that you provided, the Board did not observe sufficient evidence to conclude that there were errors inherent in the decisions made by the PEB, or that its findings rendered an injustice. With respect to your assertion that, post-service, you received Department of Veterans Affairs (VA) service-connected disability ratings for a variety of conditions, the Board noted that the VA does not make determinations as to fitness for service as contemplated within the service DES. Rather, 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. Therefore, the Board did not find your reliance on such post-service findings to be persuasive.

With respect to your request to have the Board review your service record and remove any documentation relating to false allegations of drug abuse, the Board noted that you did not

specify any particular document for removal. The Board further noted that it is not an investigative body, and without an identity of a specific document or category of documents that contained the alleged false allegations, the Board was unable to assist you in identifying such document or documents. However, during its review, the Board did not find any documentation that could have been considered false allegations of drug abuse against you. However, without a more precise description of such documentation the Board is not able to confirm that any such documentation exists, only that it did not find any in its review of your petition. Therefore, the Board determined insufficient evidence of error or injustice exists to warrant a change to your record. 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,

8/7/2024

