



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. 3779-24
Ref: Signature Date

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Dear Petitioner:

This is in reference to your reconsideration request 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 5 September 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.

A review of your record shows that you enlisted in the Marine Corps and commenced active duty on 6 August 2001. While in basic training, in September 2001 you were diagnosed with a left second metatarsal fracture that was significantly displaced. After three months of treatment with crutches you were able to complete basic training; however, you continued to experience pain. You deployed to Iraq in support of Operation Iraqi Freedom (OIF) from January 2003 until July 2003. Upon return from deployment, you sought treatment again and developed low back pain secondary to changes in your gait due to your ankle lateral instability and forefoot pain. You underwent four surgeries on the left foot and a Medical Evaluation Board referred you to the Physical Evaluation Board (PEB). On 28 December 2004, the PEB found you Unfit for continued service due to persistent metatarsalgia under Department of Veterans Affairs (VA) Code 5099-5000 at a rating of 30% warranting placement on the Temporary Disability Retired List (TDRL). You were transferred to TDRL on 31 March 2005.

On 15 November 2006, the PEB found you physically fit to perform the duties of your grade and to return to service from the TDRL. On 31 January 2007, the Commandant of the Marine Corps (CMC) informed you of two options: either to return to active duty or be discharge from the

TDRL and the naval service. You elected to be discharged and were discharge from the Marine Corps effective 1 March 2007.

You are requesting the Board place you back on TDRL due to the fact that your podiatry conditions are ongoing and should be considered permanent. You claim that, although you were informed of your right to attend a hearing to request to be continued on the TDRL, due to your post-traumatic stress disorder (PTSD) and family stressors you did not attend the hearing. To support your contentions you included VA paperwork, documenting a 100% rating from the VA for a variety of conditions, as well as a letter dated 24 February 2022 from your podiatrist and a March 2024 letter from your current medical provider.

The Board carefully reviewed your petition and disagreed with your rationale for relief. In reaching its decision, the Board noted you were notified of your right to a formal board hearing, where you could present evidence to request to be continued on TDRL. The Board determined you voluntarily waived the right to submit additional information. In addition, the Board noted the condition for which the PEB found you Unfit was rated at 0% from 1 April 2005 until 30 June 2017 by the VA. In 2017, ten years past your discharge from TDRL, the VA rated the condition at 30% under VA Code 5276. The Board found your conditions, more likely than not, worsened over time and the current VA rating and medical documentation of your condition does not provide sufficient proof that your condition would have warranted continued placement on the TDRL in 2007. As 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,

9/26/2024

