



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

██████████
Docket No. 6845-24
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 5 December 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.

The Board determined that a personal appearance with or without counsel would not materially add to their understanding of the issues involved. Therefore, the Board determined that a personal appearance was not necessary and considered your case based on the evidence of record.

As set forth in its 23 September 2022 letter denying your prior request for relief (Docket No. 5042-21), a review of your record revealed that you enlisted in the Marine Corps in 1994, and subsequently served periods of reserve and active duty through your separation date of 13 March 2007. Your final period of active duty began on 1 June 2004. From 23 August 2004 to 23 March 2005, you deployed to ██████████. On 16 August 2006, you were reviewed by a medical evaluation board (MEB), which referred you to an Informal Physical Evaluation Board (IPEB). The IPEB issued its report on 13 September 2006, finding that you were unfit due to Left Shoulder Impingement rated at 10% and Status Post Left Knee Anterior Cruciate at 10%. The IPEB further found that the conditions did not result from a combat-related injury. You sought reconsideration of these findings to a Formal Physical Evaluation Board, and on 20 October 2006, the Formal Physical Evaluation Board (FPEB) reviewed your conditions, and reported its

findings as the same as the IPEB. On 28 December 2006, you accepted the findings of the PEB. On 10 January 2007, the President of the PEB reported its results to the Commandant of the Marine Corps. On 15 March 2007, you were discharged due to your disability condition with separation pay based on the 20% disability finding.

After your discharge, you filed a petition with the Physical Disability Board of Review (PDBR). The PDBR reviewed your disability rating relating to your medical separation. After reviewing your application and medical separation file, by a majority vote, the PDBR recommended that there be no modification of your previously assigned disability rating. The minority opinion recommended that you receive a 30% disability retirement based on an additional finding of unfitness to be added to your existing 20% disability finding based on Left Knee ACL Revision: Instability rated at 10%. In November 2011, the Assistant General Counsel for the Assistant Secretary of the Navy (Manpower and Reserve Affairs) (ASN (M&RA)) reviewed the results of the PDBR and approved the recommendation of the majority of the PDBR that your record not be corrected to reflect a change in your disability rating previously assigned by the Department of the Navy's PEB.

In 2021, you filed a petition with this Board seeking to be awarded a permanent medical retirement with at least a 30% rating, back pay of the medical retirement pay, and any other relief. In support of your request, you provided current rating documents from the Department of Veterans Affairs (VA) as well as medical records. You argued that, based on the medical evidence you provided, you should have been transferred to the Permanent Disability Retired List with at least a 30% rating based on your assertion that you were unfit for continued naval service due to Post-Traumatic Stress Disorder, Migraine Headaches, Obstructive Sleep Apnea, Degenerative Arthritis of the cervical spine, Degenerative Arthritis of the lumbar spine, Left knee instability, Degenerative joint disease of left knee, and Bilateral foot peripheral neuropathy.

The Board denied your requested relief, explaining in its letter to you of 23 September 2022, that it concurred with the findings of an advisory opinion (AO) that it obtained, dated 19 July 2022, which opined that you provided insufficient support that the following conditions were unfitting: Post-Traumatic Stress Disorder, Migraine Headaches, Obstructive Sleep Apnea, Degenerative Arthritis of the cervical spine, Degenerative Arthritis of the lumbar spine, Degenerative joint disease of left knee, and Bilateral foot peripheral neuropathy. Regarding the disability conditions previously considered by the PDBR, which related to your left shoulder and left knee, the Board observed that claims for those conditions were foreclosed by the November 2011 decision of the Assistant General Counsel for the ASN (M&RA), which expressly stated that it was not subject to further review by this Board.

In your current petition, for reconsideration, you seek review of the foregoing decision of this Board, arguing that this Board erred (1) by failing to send you the AO, (2) by finding that your left knee injury occurred after your deployment to [REDACTED] in 2004, and (3) by refusing to consider the conditions previously considered by the PDBR.

In its review of your petition on reconsideration, the Board determined that you failed to provide sufficient new matter to change its prior decision. Specifically, per your request, the Board transmitted to you the AO for your comment prior to considering your petition on reconsideration. In response to the AO, you stated that you concurred with its opinion. In light

of the fact that the Board fully considered the AO in its prior denial of your petition, your response to the AO added nothing to the Board's reconsideration of your petition. With respect to your argument concerning the timing of your knee injury and the Board's refusal to consider conditions for which a decision had already been rendered by the Assistant General Counsel to the ASN (M&RA), the Board determined that regardless of the timing of your knee injury, it was foreclosed from considering your disability conditions previously considered by the PDBR, which related to your left shoulder and left knee. The Board made this determination based on the fact that such consideration was foreclosed by the November 2011 decision of the Assistant General Counsel to the ASN (M&RA), *which expressly stated that it was not subject to further review by this Board* (emphasis added). Thus, in light of all of the foregoing, the Board denied your requested relief.

In the absence of sufficient new evidence for reconsideration, the decision of the Board is final, and your only recourse would be to seek relief, at no cost to the Board, from a court of appropriate jurisdiction.

Sincerely,

1/16/2025

