



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



Docket No. 9846-24
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 application on its merits. A three-member panel of the Board, sitting in executive session, considered your application on 21 November 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 you enlisted in the Marine Corps and commenced active duty on 28 June 2010. From 31 August 2011 to 26 March 2012, you deployed to Afghanistan in support of Operation Enduring Freedom. On 16 July 2012, medical conducted your Post Deployment Health Reassessment which revealed your "thought processes" were "not impaired" and your "thought content" revealed "no impairment, suicidal tendency or homicidal tendencies."

On 14 February 2013, while facing hazing and assault charges at a special court-martial, you entered into a pretrial agreement wherein you agreed to enter a "guilty" plea at a summary court-martial (SCM). On 21 February 2013, you pleaded guilty at a SCM to three specifications of violating Article 92 of the Uniform Code of Military Justice (UCMJ) by violating a lawful general order by wrongfully exposing junior Marines to "cruel, abusive, humiliating, oppressive, and demeaning activity." You also pleaded guilty to three specifications of violating Article 128 of the UCMJ by striking junior Marines with a closed fists on the stomach and/or chest and the buttocks with your hands. The SCM Officer accepted your pleas, found you guilty of all charges

and specifications, and adjudged a sentence of reduction in rank to E-1, forfeiture of pay, and 60 days restriction. On 13 March 2013, by his Action, the Convening Authority approved the SCM sentence.

Although your Official Military Personnel File is incomplete due to missing administrative separation documentation, a review of the supporting evidence submitted with your request for relief reflects Commanding Officer (CO), [REDACTED], recommended Commanding General, [REDACTED], to separate you with an Other Than Honorable (OTH) characterization of service due to commission of a serious offense for hazing and assault. The CO noted you had “performed well in combat and ha[d] contributed to the fine combat reputation of his Battalion, but [you have] also tarnished [the command’s] reputation and jeopardized the safety of junior Marines and hindered the good order and discipline of [the] unit.” The CO recommended you be held accountable for your actions and separated from the Marine Corps with an OTH discharge. A review of the CO’s administrative separation recommendation also indicates he considered your “Final Physical/DD Form 2807, 2808, 2697/PTSD and TBI Screening.” On 30 May 2013, you were discharged with an OTH characterization of service by reason of misconduct due to commission of a serious offense and assigned a RE-4 reentry code.

In your petition, you have requested a Physical Evaluation Board (PEB) be convened to determine if you should have been medically retired from the Marine Corps because you have been “the victim of material error of fact regarding the discretion shown by COs and staff psychologists.” You contend DoD Instruction 1332.38 states the following criteria to “be eligible for a military medical retirement:” (1) The injuries were caused or exacerbated by military service; (2) The injuries were not the result of misconduct; and (3) The injuries rendered the individual unfit for continued service at the time of discharge. You contend each of these requirements is met in your situation. Specifically, you contend the following:

(1) You suffered from Post-Traumatic Stress Disorder (PTSD) during and after your military service due to the stress of deployment and losing a friend in live fire accidents. You contend your PTSD was evidenced by your anger management issues, hypervigilance and irritability, and the hazing and assault incidents which resulted in your SCM and administrative separation. You specifically contend the “hazing, extracurricular training, and assault activities” demonstrated a misguided attempt by you “to control [your] nervousness and PTSD symptoms by protecting the integrity of the Marine Corps and Unit cohesion” because the activities were targeted towards Marines you and other Marines felt had deficiencies.

(2) The Marine Corps made a “clear error of discretion” by not performing more substantial PTSD analysis for you, “a Marine who had served in combat and upon return from deployment demonstrates repeated outbursts of anger, violence, hypervigilance, and irritability, all of which are observable PTSD factors which [your] chain of command and Marine Corps physicians should have more completely considered.” Instead, you contend the Marine Corps relied on the one-page PTSD checklist¹ you were required to fill out yourself. On the PTSD

¹ The Board noted the exhibit you submitted with your request for relief was not fully readable, specifically the categories across the top of the table were so dark the words themselves weren’t able to be read. However, the

checklist, you noted “not at all” for all situations except two (“Repeated, disturbing memories, thoughts, or images of a stressful military experience” and “Repeated, disturbing dreams of a stressful military experience”) for which you indicated “a little bit.” At the bottom of the checklist, you answered in the affirmative when asked if “anyone indicated that you’ve changed since the stressful military experience.” Additionally, you contend it was error for the Marine Corps to rely on your self-reporting of symptoms to reach a verdict that you did not suffer from PTSD because your actions demonstrated symptoms that indicated a high risk for PTSD.

(3) There is no evidence within your OMPF or medical file that indicates misconduct played any role in the injuries you suffered. You specifically rely on the fact you were “never reprimanded for any misconduct, and [were] never responsible for any misconduct that led to physical or mental harm” prior to the hazing and assault which led to your discharge.

(4) Your injuries rendered you unfit for continued service at the time of your discharge. You specifically contend this element is “most easily demonstrated by the fact [you] had engaged in unauthorized additional training and assault against fellow Marines in the name of improving unit cohesion and correcting deficiencies in other Marines.”

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 observed that, in order to qualify for military disability benefits through the Disability Evaluation System (DES) with a finding of unfitness, a service member must be unable to perform the duties of his/her office, grade, rank or rating as a result of a qualifying disability condition. Alternatively, a member may be found unfit if his/her disability represents a decided medical risk to the health or the member or to the welfare or safety of other members; the member’s disability imposes unreasonable requirements on the military to maintain or protect the member; or the member possesses two or more disability conditions which have an overall effect of causing unfitness even though, standing alone, are not separately unfitting.

In reviewing your record, the Board concluded the preponderance of the evidence does not support a finding you met the criteria for unfitness as defined within the DES at the time of your discharge. In particular, the Board observed you failed to provide evidence you had any unfitting condition within the meaning of the DES. Applying a presumption of regularity, the Board determined that if you actually had a medical condition, including a mental health condition, under circumstances that warranted your referral to a medical board, you would have been so referred. In making its decision, the Board considered the absence of a current PTSD² diagnosis. Further, the Board noted it was not error or unjust for the CO to rely on you to accurately represent your “list of problems and complaints” in response to your “stressful military experience” when completing the PCL-M checklist. As further evidence you were not

Board, familiar with the PCL-M checklist, assumed the labels across the top of your checklist were similar: “Not at all”, “a little bit”, “moderately”, “quite a bit”, and “extremely”.

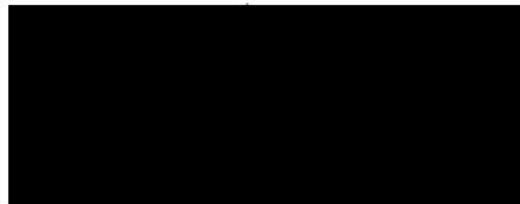
² However, the Board noted a current Department of Veterans Affairs (VA) PTSD diagnosis would not influence its decision of whether you were fit for full duty or unfit. Specifically, the Board noted the VA does not make determinations as to fitness for service as contemplated within the service disability evaluation system. 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.

“unfit” as defined within the DES, the Board noted the CO, in his recommendation for administrative discharge, states that “while it pains me to do so, [Petitioner] needs to be held accountable for his actions...” The Board determined these words are not indicative of a Marine who could not perform his duties. Further, based on a review of your OMPF, at the time of discharge, the Board noted nothing indicated you were “unable to perform the duties of [his] office, grade, rank, or rating as a result of a disqualifying disability condition.” The Board also considered the hazing and assault events that led to your SCM and discharge which you contend should have been interpreted as evidence you suffered from PTSD. The Board noted the CO explained the hazing and assault as egregious³ enough to warrant 28 days of pretrial confinement, occurring three different times in three different places, after hours, and in remote locations. Further, the hazing and assault involved not only physical exercises and “slapping, punching, and kicking junior Marines in the face, chest, and stomach,” but also forced consumption of alcohol. The Board did not find error or injustice in the recommendation of the CO and decision of the Commanding General, 1st Marine Division, to administratively discharge you due to misconduct that demonstrated a “total disregard for junior Marines and their welfare, a character flaw in a leader of Marines.” The Board also did not find error in the review process which included the required PTSD consideration but concluded your administrative separation for misconduct was warranted. Accordingly, given the totality of the circumstances, the Board determined insufficient evidence of error or injustice exists in your record and concluded your request for a PEB to determine if you should have been medically retired is not supported by the 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,

1/16/2025



³ The Board noted the CO stated your “hazing and assaults were the most egregious from the Command Investigation” and you were “identified to be present at almost every hazing incident and assaulted a junior Marine at every incident.”