



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

██████████
Docket No. 11775-24
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 application on its merits. A three-member panel of the Board, sitting in executive session, considered your application on 19 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 your personal appearance, with or without counsel, would not materially add to their understanding of the issues involved. Therefore, the Board determined a personal appearance was not necessary and considered your case based on the evidence of record.

Background Facts

A review of your record shows you enlisted in the Marine Corps and commenced active duty on 27 December 2000. On 25 November 2004, you reenlisted for four years and eight months. During this second enlistment, while deployed to ██████████ you sustained a blast injury to your left hand with amputations to pinky, thumb, and ring fingers, while storing flash-bang grenades in a storage room. The Secretary of the Navy (SECNAV), after finding you unfit for continued naval service, authorized your physical disability retirement effective 30 January 2007. In response, you requested retention on active duty in an Expanded Permanent Limited Duty (PLD) status. On 25 April 2008, the Commandant of the Marine Corps (CMC) notified

you that your request had been approved, stating you were authorized to remain on active duty in an Expanded PLD status for four years “from the date of your acknowledgment and reenlistment/acceptance.” You were further informed that if you desired retention on active duty beyond that date, you must submit a reenlistment request no more than one year and no less than four months prior to the expiration of the Expanded PLD period. On 16 May 2008, you reenlisted for 48 months.

During your third enlistment, in 2011 while in Expanded PLD status, you deployed to Afghanistan as a combat replacement. In May 2012 and July 2012, your enlistment was extended one month and three months, respectively, while awaiting a response on your reenlistment and remedial promotion requests. On 23 July 2013, an Informal Physical Evaluation Board (IPEB) found you unfit for continued naval service due to “left wrist disarticulation, amputation” and recommended placement on the Temporary Disability Retired List (TDRL) with a combined disability rating of 70%. In response, you requested to remain on active duty in a PLD status until 25 December 2020. Your request was denied, and you were temporarily retired/placed on the TDRL on 29 November 2013.

On 4 August 2015, an IPEB recommended your transition from the TDRL to the Permanent Disability Retired List (PDRL) because your disability had been determined to be permanent. You disagreed with the IPEB findings and requested a Formal PEB (FPEB). The FPEB found you unfit to perform the duties of your office, grade, or rank and recommended placement on the PDRL. However, with the assistance of counsel, on 19 May 2016, you petitioned Director, SECNAV Council of Review Boards (CORB), for relief in the form of a finding of unfit for left wrist disarticulation, amputation, and Post-Traumatic Stress Disorder (PTSD) and placement on the TDRL. Director, SECNAV CORB, granted your request for relief on 23 May 2016 after determining the 23 July 2013 PEB findings contained administrative error because the PEB should have also found you unfit due to PTSD. As a result, your continuation on the TDRL was directed in order to obtain a Periodic Physical Examination that thoroughly evaluated your unfitting conditions.

On 22 February 2017, an IPEB found you unfit and recommended transition from the TDRL to the PDRL due to left wrist disarticulation, amputation¹, because your disability was permanent. You did not accept the findings and requested a FPEB. On 23 May 2017, President, PEB, notified you that your FPEB was scheduled for 18 August 2017. Closer to the date, you requested the FPEB be rescheduled in order for you to be present for your father’s birthday due to his cancer diagnosis. Your request was denied, and on 17 August 2017, you accepted the findings of the IPEB and requested the PEB finalize your case. On 1 October 2017, you were transferred from the TDRL to the PDRL.

Requested Relief and Contentions

In your petition, you have requested “a thorough review and correction of [your] record, including consideration for reenlistment and continuation of service in the Marine Corps.” In block 12 of the DD Form 149, you categorized your request as pertaining to wrongful

¹ The PEB determined your PTSD was not an unfitting condition.

termination of service. You contend you “worked tirelessly to be retained on Active Duty as an Infantryman (0311),” to include becoming the first hand amputee in Marine Corps history to retain your Military Occupational Specialty (MOS) and deploy in combat in Sangin, Afghanistan. You further contend that, despite your accomplishments, your career “was hindered by scrutiny and setbacks.” The Board noted you did not provide any evidence to support your contention you were wrongfully terminated but only offered that your personal testimony and that of several Marines were available to provide necessary and valuable context.

The Board carefully reviewed your petition and considered whether your “termination” from service was wrongful. The Board further considered, after thorough review of the available record, your request for reenlistment and continuation of service in the Marine Corps. In reviewing your record, the Board concluded the preponderance of the evidence does not support a finding you were wrongfully terminated. A review of all available evidence indicates you were afforded due process throughout your time in the Disability Evaluation System (DES), and you have submitted no evidence² to overcome the presumption of regularity that has attached to each decision made throughout the processing. The Board first noted you were allowed to remain on active duty in an Expanded PLD for more than four years after the initial determination in 2006 that you were unfit and the SECNAV’s authorization for physical disability retirement. The Board further noted your Commanding Officer’s Non-Medical Assessment in February 2013 supported the PEB’s findings/recommendations and your placement on the TDRL in November 2013. Additionally, the Board noted any perceived error/injustice in the 2015 unfit finding and recommended placement on the PDRL was corrected by Director, CORB, in May 2016, when he continued you on the TDRL after determining an administrative error was made by the July 2013 PEB. Lastly, the Board noted no error/injustice in the 2017 IPEB and further noted that, although provided an opportunity for a FPEB, on 17 August 2017, you accepted the findings of the IPEB and, waiving your rights to submit new/additional information, appear at a formal hearing, or request Department of Veteran Affairs (VA) rating reconsideration, requested the PEB finalize your case. The Board determined that you were likely denied reenlistment due to High Year Tenure (HYT), and that the only course of action the Marine Corps could have taken, if not for the PEB’s finding regarding your fitness for duty would have been to discharge you at the expiration of your third enlistment due to HYT. Due to HYT, you would not be authorized to remain on active duty in an expanded PLD status. Accordingly, given the totality of the circumstances and in view of all of the foregoing, the Board determined your wrongful termination contention is without merit.

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

² The Board noted your contention that “given the sensitive nature of [your] experiences and the impact on [your] mental health” a personal appearance was necessary but, further noted you made zero effort, beyond the sparse information provided on the DD Form 149, to provide any context or clarity regarding your request. The Board also noted your current request does not even articulate specific contentions of why your discharge was wrongful or how your career was “hindered by scrutiny and setbacks.” Further, in block 18 of the DD Form 149, you expressed your ability to provide witness statements from several Marines “provided that their names and statements remain confidential” but failed to provide even summarized proffers of what their testimonies would provide.

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,

1/23/2025

