



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

██████████
Docket No. 3971-25
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 you did not file your application in a timely manner, the Board waived the statute of limitation in the interest of justice and considered your request on its merits. A three-member panel of the Board, sitting in executive session, considered your application on 17 September 2025. The names and votes of the panel members 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 26 August 2013. On 3 March 2015, a Medical Evaluation Board (MEB) prepared a Narrative Summary (NARSUM) and referred you to the Physical Evaluation Board (PEB) within the Disability Evaluation System (DES). The NARSUM focused on your left foot conditions and explained that you had been “afforded a reasonable amount of time to include an appropriate amount of time on LIMDU and proper treatments to attempt to control pain associated with his conditions and to allow for complete healing but unfortunately we have not been successful given significant external factors as detailed in the NARSUM history.” The NARSUM continued that you were “referred now to PEB for determination of continued fitness in USMC. It is recommended that he remain in LIMDU status pending decision of the PEB. He will be evaluated by pain management and will start formal supervised physical therapy treatment.”

On 23 March 2015, in connection with your referral to the PEB, your command prepared a Non-Medical Assessment (NMA) for use within the DES process. According to your chain of command:

How does the medical condition(s) impact the Member's work capacity in relation to his/her MOS/RATE? [Petitioner] is currently incapable of serving in his MOS due to his injury and the physical demands of the Infantry community. He is restricted from any physical training, hiking with or without weighted loads, field and garrison duty. He has been seeking medical assistance since his injury beginning in February 2014. During a 40 hour work week, [Petitioner] works an average of 32 hours due to medical appointments and physical therapy.

On 20 April 2015, you prepared a letter to be provided to the President, PEB, which focused on your foot as follows:

Over a year ago (during a hike) I broke my left foot. My foot is still not fully healed even though I have been on limited duty for the past year. I'm in pain on a regular basis and get random sharp shooting pains that we are still trying to figure out. My job as a Rifleman is very demanding on the back, legs and feet. I have several fractures in 3 different bones in my left foot. I also have sesamoid stress fractures (which if they get worse will require a complicated surgery). I have developed arthritis and was told that once you break one bone in your foot, you are 60x more likely to break it again. It's clear to myself and my doctors that in this environment I may never be able to fully heal, which means I cannot do my job. I have not been able to participate in any training for the past year. Progress with my foot has been extremely slow due to the work environment. I don't want my foot to get worse as it has before when I was sent to the field and had to put gear and a pack on and jump in and out of 7 tons. That was during the first couple of months of my light duty which resulted in me going into the LIMDU stages. At this point I have accepted the fact that this injury will most likely cost me my career as a Marine. I do not want my foot to get any worse. This injury may also keep me from other career fields I had planned to go into once I got out. I was told that if the sesamoid fractures get worse that the complicated surgery will leave me crippled for the rest of my life. At this point I would just like to get the chance to properly heal, recover and move on from this without making it worse. In this environment my foot is at risk of becoming worse and I am a liability to my fellow Marines.

On 14 May 2025, in its role within the DES, the Department of Veterans Affairs (VA) issued its DES Proposed Rating, which included a 10% rating for left foot stress fractures. The DES Proposed Rating did not include proposed ratings for mental health conditions. In particular, in the associated narrative by the VA, it states, "[f]or purposes of entitlement to Department of Veterans Affairs (VA) benefits, entitlement to service connection for anxiety is not proposed." The VA further explained that, during a VA examination on 23 March 2015, you "described your mood as typically euthymic and denied symptoms consistent with any mood, anxiety, or stress-related disorder at this time. Following a detailed examination, the examiner opined that you do not currently meet DSM-5 criteria for a psychiatric disorder. Service connection for anxiety is not proposed because the medical evidence of record fails to show that this disability has been clinically diagnosed."

An Informal PEB reported its decision in May 2015, finding you to be unfit due to left foot pain with four related Category 2 diagnoses. The IPEB assigned a 10% rating to your unfitting condition, which warranted severance pay. On 3 June 2015, you executed your Election of Options form, and the available form does not reflect that you contested the findings of the IPEB. On 30 July 2015, in accordance with the finding of the IPEB, you were discharged with severance due to disability, severance pay, non-combat (enhanced).

In your petition, you request to have your discharged corrected to reflect you received a disability medical retirement. In support of your request, you argue that you should receive a medical disability retirement based on the “anxiety that was dismissed as not service connected when in fact it was due to the mistreatment and duress he endured during his service.” You further state that you would also like the “tinnitus that was overlooked at the time” of your IPEB evaluation added to the IPEB findings as well, because the tinnitus was subsequently understood to be service connected due to the 3M Earplugs lawsuit. In addition, you argue that you believe your Department of Defense disability rating of 10% was incorrect at the time it was issued; because the VA rating was 30% with all three codes at that time being unfitting conditions. You also asserted that you believe your case was sabotaged as reprisal due to the assault investigation in your unit, to which you were a witness to, for which you stated you do not have hard proof. In support of your request, you provided service record documents, a letter to a member of congress, documents from your time in the DES, as well as a letter from a physician.

The Board carefully reviewed your petition and all of the material that you provided with that petition, and disagreed with your rationale for relief. In reaching its decision, the Board observed that it applies 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. In your case, the Board considered that the available documentation was insufficient to demonstrate that you had unfitting conditions other than the conditions identified by the IPEB in your case. In its careful review of the documentation from your review within the DES, including your command’s NMA, your personal statement, the Proposed Ratings of the VA, the Board was unable to find sufficient evidence to overcome the presumption of regularity that the IPEB’s findings were correct. By way of illustration, your available IPEB record reflects, as described above, that your command provided an NMA and you provided a written statement; neither of which focus on, or describe, that you were unable to perform the functions of your job as a result of any condition other than your foot condition. To the extent you are relying on post-service findings by the VA, the Board found this evidence to be unpersuasive because 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. In sum, in its review of all of the evidence, 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.

The Board determined there was insufficient evidence to conclude you were the victim of reprisal in violation of 10 USC § 1034. 10 USC § 1034 provides the right to request Secretary of Defense review of cases with substantiated reprisal allegations where the Secretary of the Navy’s

follow-on corrective or disciplinary actions are at issue. Additionally, in accordance with DoD policy you have the right to request review of the Secretary of the Navy's decision regardless of whether your reprisal allegation was substantiated or non-substantiated. Your written request must show by clear and convincing evidence that the Secretary of the Navy acted arbitrarily, capriciously, or contrary to law. This is not a de novo review and under 10 USC § 1034(c) the Secretary of Defense cannot review issues that do not involve reprisal. You must file within 90 days of receipt of this letter to the Under Secretary of Defense for Personnel and Readiness (USD(P&R)), Office of Legal Policy, 4000 Defense Pentagon, Washington, DC 20301-4000. Your written request must contain your full name, grade/rank, duty status, duty title, organization, duty location, mailing address, and telephone number; a copy of your BCNR application and final decisional documents; and a statement of the specific reasons why you are not satisfied with this decision and the specific remedy or relief requested. Your request must be based on factual allegations or evidence previously presented to the BCNR; therefore, please also include previously presented documentation that supports your statements.

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,

11/18/2025

Executive Director

Signed by: