



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. 7706-20
Ref: Signature Date

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Dear █

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 case on its merits. A three-member panel of the Board, sitting in executive session, considered your application on 21 October 2021. 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, to include the 3 September 2014 guidance from the Secretary of Defense regarding discharge upgrade requests by Veterans claiming post-traumatic stress disorder (PTSD) (Hagel Memo), the 25 August 2017 guidance from the Office of the Under Secretary of Defense for Personnel and Readiness (Kurta Memo), and the 25 July 2018 guidance from the Under Secretary of Defense for Personnel and Readiness regarding equity, injustice, or clemency determinations (Wilkie Memo). In addition, the Board considered the advisory opinions contained in Senior Medical Advisor CORB letter 5220 CORB: 002 of 5 July 2021 and Director CORB letter 5220 CORB: 001 of 14 Jul 2021 along with your response to the opinions.

A review of your record shows that you entered active duty with the Marine Corps in July 2006. During your deployment to Afghanistan in 2009, you suffered multiple injuries as a result of your exposure to the Improvised Explosive Device explosion. You later received treatment for mental health issues and were placed on limited duty in March 2011 for personality disorder, adjustment disorder with depression, and impulse control disorder. In the meantime, you committed misconduct in the form of a false official statement, damaging government property, and larceny resulting in the imposition of non-judicial punishment on 10 May 2011. Later that year, you were placed in Sick in Quarters status for three days in August 2011 after suffering

seizure symptoms. Non-judicial punishment was again imposed on you for orders violations related to operating your vehicle against orders in September 2011. In the meantime, you were found fit for active duty by the Physical Evaluation Board (PEB) on 30 January 2012. The PEB concluded your Mood Disorder, Traumatic Brain Injury (TBI), Grade III Concussion, C2 Fracture, and Generalized Seizure were not separately unfitting conditions. Your Antisocial Personality Disorder and Impulse Control Disorder were deemed not to be compensable disability conditions. After receiving counseling for your personality disorders, you were notified of administrative separation processing for condition not a disability. On 31 July 2012, you were discharged for condition not a disability with a General characterization of service. Post-discharge, the Department of Veterans Affairs (VA) rated you for a number of disability conditions including TBI and Post-Traumatic Stress Disorder (PTSD) resulting in a combined rating of 100%. The Naval Discharge Review Board previously denied your request for an upgrade to your characterization of service in 2013. Your medical records document that you commenced post-discharge PTSD treatment in May 2014.

The Board carefully considered your arguments that you deserve to be placed on the disability retirement list or have your narrative reason for separation change to Secretarial Authority. You also request to have your characterization of service upgraded to Honorable. You argue that the Marine Corps erroneously discharged you without providing comprehensive care for your TBI and PTSD conditions which violated instructions. You also argue that your misconduct was mitigated by those conditions. Finally, you assert that under current regulations, you would not have been allowed to be discharged for conditions for which the PEB found you fit for active duty. Unfortunately, the Board disagreed with your rationale for relief. In making their findings, the Board substantially concurred with the advisory opinions in your case.

In order to qualify for military disability benefits through the Disability Evaluation System with a finding of unfitness, a service member must be unable to perform the duties of their office, grade, rank or rating as a result of a qualifying disability condition. Alternatively, a member may be found unfit if their 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 the evidence in your case, the Board determined the preponderance of the evidence does not support a finding that you met any of the criteria for unfitness at the time of your discharge from the Marine Corps. The Board found insufficient evidence to support a finding that you suffered from an occupational impairment sufficient to prevent you from performing the duties of your office, grade, rank or rating. Other than your misconduct, the Board noted that you were performing your duties satisfactorily and earned 3.8 proficiency marks during your enlistment. In addition, the Board did not find your VA ratings probative on the issue of fitness for active duty since 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. Therefore, the Board concurred with the advisory opinion finding that, more likely than not, you were fit for active duty even when considering the PTSD testing evidence that was not previously considered by the PEB. In making this finding, the Board considered your argument that the advisory opinion finding that you likely would have been found fit should

be discounted since the Marine Corps failed to properly refer your PTSD condition to the PEB. The Board disagreed with this line of reasoning since you requested to be placed on the disability retirement list. Therefore, an analysis of whether your claimed disability conditions would have been unfitting at the time of your discharge was deemed relevant and, ultimately, persuasive evidence to the Board. Further, the Board did not find any error with the PEB's consideration of your seizures vice your claimed condition of Epilepsy. Again, the Board found no evidence that your seizures or Epilepsy met the criteria for unfitness at the time of your discharge from the Marine Corps and, therefore, it did not change the Board's ultimate decision to find that the preponderance of the evidence did not support your placement on the disability retirement list. Based on these factors, the Board concluded insufficient evidence exists to support your placement on the disability retirement list.

Second, the Board concluded your characterization of service remains appropriate. Marine Corps Order 1900.16 provides the standards for determining characterizations of service. It states that acceptable conduct marks of 4.0 are required for assignment of an Honorable characterization of service. Since your conduct marks fell below the required level for assignment of an Honorable characterization, the Board determined that you were appropriately assigned a General characterization based on your service record. In making their findings, the Board considered that you suffered from mental health conditions including a personality disorder and impulse control disorder. However, the Board did not find those conditions sufficiently mitigating to merit a change to your characterization of service based on the type of offenses committed by you during your enlistment. The Board considered the fact you made a false official statement, committed larceny, and intentionally violated orders. These offenses are sufficiently serious to merit a punitive discharge under the Uniform Code of Military Justice. Therefore, in the Board's opinion, you received sufficient mitigation from the Marine Corps when they chose not to pursue more serious administrative actions that could have resulted in an Other than Honorable characterization of service. Based on these factors, the Board concluded no change to your characterization of service is warranted.

Finally, the Board considered whether a change to your narrative reason for separation to Secretarial Authority is appropriate. After reviewing the evidence, the Board determined the preponderance of the evidence supports your condition not a disability discharge based on your diagnosed personality disorder. As discussed above, the Board found insufficient evidence that you were unfit for any of your claimed disability conditions. They also were not persuaded by your arguments that you could not be administratively separated under current guidelines since you were found fit for active duty by the PEB. The Board noted that you were counseled for your personality disorders after the PEB found you fit and warned that continued deficiencies related to your condition could result in an administrative separation. Based on this evidence, the Board determined the Marine Corps followed applicable administrative separation guidelines prior to initiating administrative separation processing after the PEB decision to find you fit for active duty. Therefore, they found no error or injustice to require changing your narrative reason for separation to Secretarial Authority.

While the Board empathizes with your current medical conditions, they felt compensation and treatment for your disability conditions fall outside the scope of the Department of Defense

disability system and under the purview of the VA. Accordingly, the Board found insufficient evidence of error or injustice to warrant a change to your record.

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,

10/24/2021

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Deputy Director

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