



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



Docket No: 3236-21

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 for Correction of Naval Records, sitting in executive session, considered your application on 22 October 2021. 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, to include the Kurta Memo, the 3 September 2014 guidance from the Secretary of Defense regarding discharge upgrade requests by Veterans claiming post-traumatic stress disorder (PTSD) (Hagel 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), and the relevant Advisory Opinion.

The Board determined that your 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.

You enlisted in the Navy and began a period of active duty on 4 November 2003. During your enlistment medical screening in January 2003, you denied any psychiatric condition(s) and denied being hospitalized. After beginning active duty on 4 November 2003, you named M.A.M., date of birth of [REDACTED], as your daughter on your Record of Emergency Data. On

10 November 2003, you received a Recruit Mental Health screening and stated that you had a history of psychiatric treatment and a history of receiving psychotropic medication. You stated that one year prior you were hospitalized for two weeks during which time you prescribed an antidepressant. You also stated during the screening that you did not know why your wife divorced you and that you had been arrested multiple times and jailed for trespassing on her property. You also stated you had been using marijuana weekly since 9th grade. You were diagnosed with Adjustment Disorder with Depressed Mood, and Personality Disorder, not otherwise specified, and recommended for an Entry Level Separation. On 13 November 2003, you were notified of administrative separation proceedings against you on the basis of the convenience of the government and defective enlistment and induction due to erroneous enlistment as evidenced by a Personality Disorder. On 17 November 2003, Commanding Officer, Recruit Training Command authorized the administrative separation. On 20 November 2003, you were discharged from the Navy on the basis of an Erroneous Entry and received an Entry Level Separation and a reentry (RE) code of RE-4.

In your application for correction you ask for an upgrade to an honorable discharge. You contend that you suffered from Post Traumatic Stress Disorder (PTSD) resulting from sexual abuse through the Boy Scouts and that the “Navy did not evaluate (you) with PTSD.” You state that the diagnosis was completed by Dr. █ MD with Depression, Bipolar and Anxiety. You provide a “Sexual Abuse Survivor Proof of Claim” that you signed on 13 November 2020. The “Sexual Abuse Survivor Proof of Claim” appears to have been completed with information provided by you; it provides an account of a sexual assault perpetrated against you at a campsite in █ or █ when you were 12 years old, and states in part that the assault has affected your behavior and health, and that you had never been with a woman or had a relationship with a woman.

As part of the review process, a Licensed Clinical Psychologist reviewed your request and issued an Advisory Opinion dated 8 September 2021. The Advisory Opinion considered the contention that you were dealing with PTSD and that this diagnosis may have mitigated the misconduct that led to an Entry Level Separation. The Advisory Opinion noted that although you contend that you suffer from PTSD, you did not provide evidence to support a misdiagnosis during your military service. Furthermore, the Advisory Opinion noted that the documentation you submitted to support your PTSD claim provides conflicting information. Notably, while your Official Military Personnel File indicates you were married and had a daughter, the information you provided in support of your application states that you have never had a relationship with a woman. The Advisory Opinion concluded that there is insufficient evidence to establish an association between your purported PTSD related to a sexual trauma at age 12 and your Entry Level Separation. The Advisory Opinion was provided to you, and you were given 30 days in which to submit a response. When you did not provide a response within the 30-day timeframe, your case was submitted to the Board for consideration.

The Board carefully considered all potentially mitigating factors to determine whether the interests of justice warrant relief in your case in accordance with the Wilkie Memo. These included, but were not limited to your contentions that you suffered from PTSD and that the Navy did not evaluate you for PTSD. With regard to your claim of a mitigating mental health

condition, the Board reviewed the analysis and determinations of the Advisory Opinion and substantively concurred with its conclusion that the objective evidence does not establish an association between your purported PTSD and your Entry Level Separation. The Board considered that in your pre-enlistment Report of Medical History of 29 January 2003, you failed to disclose that you had been hospitalized or that you had received antidepressants. Furthermore, in your Illicit Behavior Screening Certificate dated 27 January 2003, you denied using controlled substances. In your Recruit Mental Health evaluation, you provided contradicting information by stating that you had been hospitalized the year prior for two weeks, had received an antidepressant, and had routine drug use since the 9th grade. The Board found that your administrative discharge on the basis of an Erroneous Entry was supported by the information you provided in the Recruit Mental Health Screen, and that your Entry Level Separation was issued without error or injustice.

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,

11/8/2021

