

DEPARTMENT OF THE NAVY

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

> Docket No: 3963-21 Ref: Signature Date



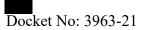
Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to Title 10, United States Code, Section 1552. After careful and conscientious consideration of the entire record, the Board for Correction of Naval Records (Board) found the evidence submitted was 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 statute of limitations was waived in accordance with the 25 August 2017 guidance from the Office of the Under Secretary of Defense for Personnel and Readiness (Kurta Memo). A three-member panel of the Board, sitting in executive session, considered your application on 29 November 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, and the 25 July 2018 guidance from the Under Secretary of Defense for Personnel and Readiness regarding equity, injustice, or clemency determinations (Wilkie Memo). Additionally, the Board considered a 30 September 2021 advisory opinion (AO) furnished by a qualified mental health provider, a copy of which was provided to you and to which you did not provide a response.

You enlisted in the Marine Corps and commenced a period of active duty on 19 September 2017. On 1 February 2018, you were issued a written counseling statement explaining to you that you were unable to continue training due to a medical finding that you had a depressed mood and anxiety. On 5 February 2018, you were issued a written counseling statement explaining that you were being discharged based on your entry level performance and conduct as a result of your medical diagnosis of depressed mood and anxiety. On 21 February 2018, you were discharged with an entry level separation based on your entry level performance and conduct.

The Board carefully considered all potentially mitigating factors in your petition to determine whether the interests of justice warrant relief in your case including in accordance with the



Wilkie Memo. You contend in your petition that you divulged information concerning certain problems you were having under the assumption of confidentiality, but it ultimately led to your discharge from the Marine Corps. You also stated that you loved the service and your country and that you are still disappointed that everything did not pan out as you had originally thought that it would. You also stated that you desire to have your separation looked at favorably with an honorable discharge and change of reentry code due to the fact that you were very close to meeting the 180 days of active service required before your condition led to your subsequent discharge. Finally, you indicated on your DD Form 149, by way of checking an indicated block that your petition related to "other mental health" concerns.

In light of the fact that your discharge related to a mental health diagnosis, the Board requested, and reviewed, the AO. The AO reviewed your service record as well as your petition and the matters that you submitted. According to the AO:

Petitioner requested upgrade to his re-enlistment code and discharge characterization as, 'I was so close to meeting the 180 days of active service before my condition ultimately led to my subsequent discharge.' Though he indicated on his application that 'Other Mental Health' was a condition related to his request, he did not describe any traumatic events, psychological symptoms and/or behavioral changes that would support a diagnosis of a mental health condition, occupational impairment due to his purported mental health condition, or a nexus between his failure to progress in his training and a mental health condition. He did not provide any in-service or post-discharge clinical evidence contesting his in-service diagnosis of an Adjustment Disorder, or the existence of other diagnosed mental health conditions.

Petitioner's in-service records revealed an enlistment physical examination in which the Petitioner described himself in "good health" and that he did not have any history of mental health symptoms or conditions or substance abuse. Petitioner underwent a psychological evaluation on 1/23/18 and a follow-up clinic visit on 1/23/18, at the Branch Medical Clinic due to failure to adequately progress in his training and was diagnosed with Adjustment Disorder with depressed and anxious mood, due to his failure to adapt to the military environment. Petitioner was recommended for administrative separation. The remainder of Petitioner's in-service records did not contain any additional diagnosed mental health conditions, or symptoms or behaviors indicative of additional mental health conditions. He did not provide any in-service or post-discharge clinical records in support of his petition for review.

The AO concluded, "based on the available evidence, it is my considered medical opinion the preponderance of objective evidence indicated Petitioner's in-service diagnosis of Adjustment Disorder due to failure to adapt to the military environment explained his inability to meet training requirements, and that the command's decision o administratively separate Petitioner as an Entry Level Separation with an Uncharacterized discharge and an RE-4 code appeared appropriate."

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Based upon its review, the Board concurred with the finding of the AO, and did not find an error or injustice in your naval records. The Board determined that the potentially mitigating factors that you raised, namely that you divulged confidential information during your psychological evaluation, your desire to upgrade your discharge, and that you were close to meeting 180 days in service, were insufficient to warrant relief. The Board also found instructive the AO's finding that you did not provide any in-service or post-service clinical records to support any of your contentions. Ultimately, the Board did not find any irregularities in your medical screening and discharge, and determined that your discharge appears to have been properly conducted and characterized. Accordingly, the Board determined that your request does not merit relief.

You are entitled to have the Board reconsider its decision upon the 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.

