



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: 3979-21

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 for Correction of Naval Records, sitting in executive session, considered your application on 29 December 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 Marine Corps and began a period of active duty on 30 October 2000. Your Recruit Information Card reflects numerous counselings to include a 4 November 2000 counseling for assignment to Physical Conditioning Platoon (PCP) for three weeks; 11 November and 18 November 2000 counselings for performance; a December 2000 counseling on being dropped to █, counseling on being assigned as first squad leader on 30 December

2000, and subsequently fired as squad leader on 2 January 2001 for quitting; a 2 January 2001 counseling on a lack of self-confidence; and a 15 January 2001 counseling for failure to negotiate an obstacle course. Your Recruit Information Card further reflects a 20 January 2001 counseling that stated in part that you did the minimum to progress. An entry dated 25 January 2001, notes that you indicated you had been exposed to childhood abuse although you were not abused individually. The Recruit Information Card contains a 7 February 2001 entry that states that foreseeing an upcoming practice Physical Fitness Test, you professed a back injury suffered prior to boot camp. In mid-February 2001, your record notes you had excessive range violations and that you said that you believed that you would hurt yourself or others if you were to return to the rifle range. On 16 February 2001, Branch Medical evaluated you and diagnosed you with Personality Disorder Not Otherwise Specified. On 20 February 2001, Commanding Officer, Recruit Processing Company notified you that entry level administrative separation proceedings were being initiated against you on the basis of failure to adapt to the Marine Corps environment. On 6 March 2001, you were discharged from the Marine Corps on the basis of Entry Level Performance and Conduct, and received an uncharacterized discharged and a reentry (RE) code of RE-3F.

Following your discharge from the Marine Corps, you sought enlistment in the Navy. On 26 March 2001, Commander, Navy Recruiting Command approved an enlistment eligibility waiver for the RE-3F that you received upon separation from the Marine Corps. On 27 March 2001, you signed an enlistment contract for eight years of duty in the Naval Reserve with four years of active duty. On 29 March 2001, you began a period of active duty in the Navy. On 2 May 2001, the Chronological Record of Medical Care reflects that you reported knee pain. You were seen again by Medical on 16 May, 22 May, and 24 May 2001 for knee pain. On 29 May 2001, Medical entered notes stating that you suffered from chronic knee pain that Existed Prior to Entry (EPTE). On 31 May 2001, you were notified of administrative separation due to erroneous enlistment as evidenced by chronic knee pain. On 1 June 2001, Commanding Officer, Recruit Training command authorized an entry level separation due to defective enlistment and induction due to erroneous enlistment as evidenced by chronic knee pain. On 6 June 2001, you were separated from the Navy on the basis of Failed Medical/Physical Procurement Standards and received an uncharacterized discharge and an RE-4.

In your application for correction, you ask for a change to your Entry Level Separation. You did not specify whether you sought a change to the 6 March 2001 uncharacterized discharge you received from the Marine Corps or to the 6 June 2001 uncharacterized discharge you received from the Navy. You contend that Post Traumatic Stress Disorder (PTSD) was involved and not known of at the time of your service. You further assert that you have an Entry Level Separation (uncharacterized) due to PTSD/childhood abuse which re-emerged due to unlawful treatment in training. In support of your application you provide medical treatment records and information showing that you have been rated as 100% disabled by Veterans Affairs (VA).

As part of the review process, a Licensed Clinical Psychologist reviewed your request and issued an Advisory Opinion dated 8 November 2021. The Advisory Opinion considered that during your Marine Corps recruit training, you related your shortcomings to your stressful childhood and indicated that although you were not individually abused, you were exposed to childhood

abuse. The Advisory Opinion noted that you were diagnosed with Personality Disorder, Not Otherwise Specified while in the Marine Corps and subsequently discharged by reason of failure to adapt. The Advisory Opinion considered that after being granted a waiver to join the Navy, you began having knee issues during your initial months of training. You were separated from the Navy due to erroneous enlistment as evidenced by chronic knee pain. The Advisory Opinion noted that you provided ample documentation of mental health treatment after your discharge from the Navy, that you have a post-service diagnosis of PTSD, and that you have a 100% disability rating from the VA. The Advisory Opinion determined that although your in-service medical records reflect a mental health condition of Personality Disorder and you have a post-discharge diagnosis of PTSD, your inability to adapt to military service requirements appears to have been the Commands' decision for both the Marine Corps and the Navy to separate you with an Entry Level Separation, Uncharacterized discharge. 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 contention that you were suffering from a mental health condition that merited a change to your Uncharacterized Entry Level Separation(s). The Board noted that the Advisory Opinion indicated that "misconduct" led to your Entry Level Separation. However, the Board found that while your Marine Corps record reflected counselings on your Recruit Information Card, neither your Marine Corps nor Navy service record contained evidence of punitive administrative or judicial action for misconduct. Accordingly, the Board considered whether your Entry Level Separations for both the Marine Corps and the Navy were issued without error or injustice. The Board took into consideration the Advisory Opinion, the information you provided in support of your application, and the information in your records of service with both the Marine Corps and the Navy. The Board also evaluated your contention of maltreatment. The Board noted that your Recruit Information Card contains numerous entries in which you were given the opportunity to report mistreatment but denied verbal abuse, physical abuse, or maltreatment. Furthermore, your Recruit Information Card noted that you were screened for allegations, but none were stated. The Board found that based on your record and absent information supporting your contention, the evidence does not support a finding of maltreatment or abuse during your military service.

With regard to your claim of a mental health condition to include PTSD resultant from childhood trauma, which merits a change to your Entry Level Separation, the Board carefully reviewed your administrative discharges from both the Marine Corps and the Navy. The Board determined that your Entry Level Separation (Uncharacterized) from the Marine Corps after four months and seven days of service was supported by the entries in your Recruit Information Card which established a failure to adapt in areas of physical ability, temperament, motivation, and weapons handling. The Board found that your Entry Level Separation (Uncharacterized) from the Navy after two months and eight days was supported by the Medical Notes which chronicle persistent knee pain that was diagnosed as Existing Prior to Entry. Accordingly the Board determined that both Entry Level Separations (Uncharacterized) from the Marine Corps and the Navy, respectively, were issued without error or injustice.

The Board noted you previously petitioned the Board in 2012 (NR12-9150) for a change to your record to reflect an honorable medical discharge. Your previous application was administratively closed due to lack of receipt of your official VA claims folder. In your current application, you provide documentation of your VA rating decision. The Board considered your 100% post-discharge rating from the VA as well as your 16 February 2001 diagnosis of Personality Disorder, Not Otherwise Specified. The Board concurred substantively with the Advisory Opinion's determination that your discharges from the Marine Corps and the Navy were consistent with your diagnosed Personality Disorder and inability to adapt to military service requirements. The Board found that your record does not indicate that you were discharged on the basis of a medical condition or disability that rendered you unfit pursuant to the criteria of SECNAVINST 1850.4 series. The Board noted that receipt of substantial disability compensation from the VA such as your 100% disability rating is not probative of the existence of error or injustice in your Entry Level Separations from either the Marine Corps or the Navy. Furthermore, even in consideration of the in-service Personality Disorder diagnosis, SECNAVINST 1850.4 series specifies that personality disorder is among the Non-Compensable Medical Conditions, and apart from the appropriately executed Entry Level Separations from both the Marine Corps and the Navy, a disability determination with a compensable rating based on your diagnosis of personality disorder is not warranted under the applicable regulatory guidance. The Board concluded that both Entry Level Separations (Uncharacterized) were supported by the information in your service records, were properly executed and do not merit corrective action.

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,

1/11/2022

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Executive Director

Signed by: █