



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

█  
Docket No. 1389-22  
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 you did not file your application in a timely manner, the statute of limitation 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 6 June 2023. 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 Board also considered a 28 February 2022 advisory opinion (AO) from a qualified psychologist, a copy of which was provided to you. In response to this AO, you provided additional material in support of your petition, discussed below. Thereafter, the Board obtained the 30 May 2023 AO from a qualified psychiatrist, a copy of which was provided to you.

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.

A review of your record shows that you were initially commissioned an ensign in the Navy on 6 March 1980 while you were a medical student. You commenced a period of active duty in the Navy on 17 June 1983. Your official military personnel file (OMPF) contains an Officer Appointment and Acceptance of Oath document, which reflects you were promoted to permanent grade of lieutenant commander on 1 September 1988. You served on active duty until 1 June 1994, at which time you separated from service. According to your Certificate of

Release or Discharge from Active Duty (DD Form 214), your rank at the time of discharge was lieutenant commander.

Although your affiliation paperwork is not contained within your OMPF, it is apparent that after your release from active duty, you affiliated with the Navy Reserve. On 24 May 2005, you received a letter from Navy Personnel Command stating that you had been on the Inactive Status List for over a year and that you were required to resolve your Navy Reserve status. Thereafter, according to a 3 November 2005 letter to you from your commanding officer, you were involuntarily separated from the Navy Reserve on 1 July 2005. According to that letter, the Secretary of the Navy approved the "report of a board of officers" that recommended your discharge "under Honorable conditions." That letter also reflected that it enclosed an Honorable discharge certificate, which was not enclosed with the letter available in your OMPF.

In your petition, you request that your DD Form 214 be changed to reflect that you were a Commander at the time of your release from active duty. In support of your request, you provided two letters from flag officers congratulating you for your selection to commander from summer 1993, which was prior to your release from active duty. You also stated that, while you were in the Navy Reserve, you received a letter warning you that you were not accumulating enough points, and that you resigned your position in the Navy Reserve due to post-traumatic stress disorder (PTSD).

The Board carefully reviewed all of your contentions and the material that you submitted in support of your petition, and the Board disagreed with your rationale for relief. The Board first addressed your request to have your DD Form 214 changed to reflect that you were a commander upon your release from active duty. Here, the Board found insufficient evidence that you were promoted to commander prior to your release from active duty in 1994. You provided evidence in the form of two letters from flag officers congratulating you on your selection to promotion to commander. The evidence reflects you were selected for commander in the fiscal year 1994 promotion board, which would have published its results near the time the flag officers wrote their letters of congratulations. However, as reflected in your OMPF, your effective date of rank was 1 July 1994, which was after your release from active duty. Accordingly, the Board found no error or injustice with respect with respect to the rank that is reflected on your DD Form 214, and that you provided no basis for it to reflect that you were a commander at the time of your release from active duty.

The Board then considered your assertion that you resigned from the Navy Reserve as a result of your PTSD. In order to assist it in reviewing your assertion, the Board first obtained the AO from a psychologist. The psychologist concluded that based on the available evidence there is post-service evidence that you may have incurred PTSD during military service but there was insufficient evidence that your separation from service could attributed to PTSD.

After you received a copy of this AO, you provided additional information, including a letter from you describing your experiences incurred while you were in service, a letter from a licensed clinical social worker, and a letter from your wife. After receiving your additional materials, the Board requested an AO from a psychiatrist. The AO from the psychiatrist concluded that the "available evidence does not clearly support a finding of unfitness for duty," but that the

“preponderance of objective evidence does provide sufficient support that Petitioner incurred PTSD during his active and reserve military service and this condition contributed to his avoidant behavior in prematurely requesting discharge from active duty and accepting involuntary separation from the Navy Reserves.”

In its review of your petition and all of the supporting materials, the Board applied liberal consideration consistent with the Kurta Memo, but, upon review of the entirety of the record, it did not find that you were eligible for any relief. In reaching its decision, the Board observed that, 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 of 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. Further, inasmuch as your final discharge was from the Navy Reserve, there must also be a finding that any qualifying disability occurred in the line of duty (LOD) by way of a formal LOD finding.

In reviewing your record, the Board concluded the preponderance of the evidence does not support a finding that you met the criteria for unfitness as defined within the Disability Evaluation System at the time of your discharge from active duty or from the Navy Reserve. In reaching its decision, the Board observed that there is no evidence in your service record, and you provided none, describing that, while you were on active duty, you were evaluated by a medical board with a referral the Physical Evaluation Board. On this point, the Board concurred with the conclusion of the AO from the psychiatrist that the available evidence did not clearly support a finding of unfitness for duty. After your release from your initial period of active duty, you participated in the Navy Reserve. The Board observed that your service record includes documentation that while you were in the Reserve you were involuntarily separated. In your case, the Board presumed that your Reserve unit had a basis for discharging or releasing you from the Reserve. There is no evidence that the asserted basis for your involuntary separation was due to a finding that you had a qualifying disability condition or that you were unable to perform the duties assigned to you. In addition, even assuming that you had a medical condition while you were in the Navy Reserve, there is no evidence, and you provided none, that you were injured or developed a qualifying condition during a qualifying period of military service in the Navy Reserve and received a Line of Duty determination for such alleged condition.

Finally, to the extent you assert that you are deserving of a medical retirement based on a finding of VA disabilities, the award of such disabilities for conditions connected to your service in the Navy did not persuade the Board these conditions were unfitting at the time of your discharge from the Navy. 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, in its review and liberal consideration of all 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.

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,

6/9/2023

