



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: 1427-22
Ref: Signature Date

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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 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 Board waived the statute of limitation 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 20 May 2022. 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 the 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 to 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). The Board also considered the advisory opinion (AO) furnished by a qualified mental health provider and licensed clinical psychologist which was previously provided to you. You were afforded an opportunity to submit a rebuttal to the AO, which was received on 22 March 2022.

The Board determined that your personal appearance, with or without counsel, would not materially add to the understanding of the issues involved. Therefore, the Board determined a personal appearance was not necessary and considered your case based on evidence of record.

You enlisted in the Marine Corps and began a period of active service on 15 August 2016. You were medically recommended for separation for unsuitability, on 6 September 2017, after a suicide attempt resulted in diagnoses of Adjustment Disorder with anxiety and depressed mood

and Personality Disorder, based in part on pre-service medical history. Your command recommended a discharge of General (Under Honorable Conditions) for the reason of condition, not a disability. This recommendation was positively endorsed due to your limited time in the Marine Corps, as well as the fact that your diagnoses resulted from pre-existing medical conditions which would have precluded your enlistment, and you were discharged, on 22 November 2017, with a reentry code of “RE-4.”

Post-discharge, the Department of Veterans Affairs (VA) granted you a service-connected disability rating for major depressive disorder at 50%. Your rating was increased to 70% in 2021. You previously submitted a petition to the Board contending that your service merited an Honorable discharge and that your VA disability rating is evidence that your discharge should have been for medical disability rather than condition, not a disability. On 2 December 2021, the Board sitting in executive session reviewed your initial claims and granted partial relief with respect to upgrading your characterization of service; however, the Board determined that a change of narrative reason for separation was not warranted, noting, in addition to other relevant factors, the distinction between unsuitability as opposed to an unfitting disability.

With respect to your current petition, 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. This included, but was not limited to, your desire to change your reentry code to “RE-1” and reinstatement to active duty, contending that your discharge and “RE-4” reentry code were inequitable because there is insufficient evidence that your mental health condition would have rendered you unfit to perform duties. You based this contention on the Board’s previous determination that your service was Honorable because it met the required standards for your paygrade and occupational field and did not render you medically unfit. For purposes of clemency consideration, the Board noted you did not provide supporting documentation describing post-service accomplishments, or advocacy letters.

Because you contend a mental health condition, the Board also considered the AO, which noted in pertinent part:

Petitioner’s OMPF did contain evidence of a diagnosis of a mental health condition (Adjustment Disorder). Additionally, Petitioner provided documentation of a post-discharge diagnosis and service connection with the VA for a mental health condition (Depressive Disorder).

The AO concluded, “[b]ased on the available evidence, it is my considered clinical opinion Petitioner was diagnosed with a mental health condition, during his military service, which affected the circumstances of his discharge. Given his military service was affected by a mental health condition, it would not be unreasonable to require a medical evaluation to determine physical qualification to re-enter military service should Petitioner desire to re-enlist in the military services.”

In response to the AO, you requested the Board reconsider the previous denial of your request for a disability retirement.

Based on their review, the Board concluded insufficient evidence exists to support your request to change your reentry code to RE-1. In making this finding, the Board considered your adjustment disorder diagnosis and your suicide attempt that made you, in the opinion of the board, unsuitable for continued military service. In addition, the Board concurred with the AO that your military service was affected by a mental health condition. As a result, the Board determined you were appropriately not recommended for reenlistment and properly assigned a RE-4 reentry code. Consistent with this finding, the Board also determined your request to be reinstated to the Marine Corps is not supported by the preponderance of the evidence. After applying liberal consideration, the Board did not find evidence of an error or injustice that warrants changing your reentry code or granting clemency in your case.

Regarding your request for a change to your narrative reason for separation to disability, the Board concurred with the rationale provided in the previous Board decision. The Board lacked evidence that you were unfit for continued naval service as a result of a disability condition. In making this finding, the Board noted the difference between being unsuitable for continued naval service and unfit for continued naval service. Based on your diagnosis and suicide attempt, the Board found you were unsuitable for continued service due to the potential for continued self-harm associated with your adjustment disorder. However, the Board noted your superior performance and conduct in determining that you were able to perform the duties of your office, grade, rank or rating while on active duty despite the existence of any disability condition. This led them to conclude insufficient evidence of unfitness exists with respect to any disability conditions that may have existed at the time of your discharge. Accordingly, the Board determined that your request does not warrant 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 is attached 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,

6/9/2022

[REDACTED]

Executive Director

Signed by: [REDACTED]