

DEPARTMENT OF THE NAVY

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

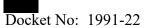
> Docket No: 1991-22 Ref: Signature Date

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 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 15 July 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) of a qualified mental health provider which was previously provided to you. You were afforded an opportunity to submit a rebuttal but did not do so.

You enlisted in the Marine Corps and participated in an enlistment physical, on 20 November 2017, during which you responded "no" to the question whether you had "ever been evaluated or treated for a mental condition." You were found fit to enlist and began a period of active duty on 8 January 2018. On 12 January 2018, you were recommended for administration separation for fraudulent entry for failing to disclose preservice diagnoses of Asperger's Syndrome and ADHD along with pre-service suicidal ideations. On 18 January 2018, Commanding Officer, Recruit Training Regiment had approved your separation for fraudulent entry due to failure to disclose relevant medical information which might otherwise have resulted in finding you medically unfit to enlist or would have at least required substantial medical screening. You were discharged



three days later, on 29 January 2018, with an uncharacterized entry-level separation and reenlistment code of RE-3P. This reenlistment code reflected the requirements for mental health reevaluation for any future enlistment attempt and a potential waiver depending upon the outcome of such evaluation.

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 desire to change your reentry code to permit reenlistment and your contentions that you were merely evaluated by multiple doctors at the behest of your parents with no conclusive diagnosis, that your parents simply assumed you were on the Autism spectrum due to having been assigned an individual education plan in school, and that you have since confirmed with your primary care physician that you were never diagnosed as having any disorder or being on the Autism spectrum. For purposes of clemency consideration, the Board noted you did not provide supporting documentation describing post-service accomplishments, or advocacy letters.

Because you contend that mental health (MH) issues, or the lack thereof, affected the circumstances of your discharge, 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 that impaired his ability to function in the military environment. Petitioner did not submit evidence to refute the in-service diagnoses (i.e., post-discharge psychiatric evaluation). Caution should be taken in considering any change to his reenlistment code that would remove a requirement for a mental health re-evaluation, given the evidence of a possible mental health condition.

The AO concluded, "[b]ased on the available evidence, it is my considered clinical opinion there is sufficient evidence Petitioner experienced a mental health condition during his military service, which affected the circumstances of his discharge."

Based upon this review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that the preponderance of the evidence supports the Marine Corps' decision to administratively separate you for fraudulent enlistment based on your intentional failure to disclose your pre-service medical history. In making this finding, the Board concurred with the AO regarding the legitimate concern in ensuring you receive proper screening prior to any future attempt to reenlist, observing that your "RE-3P" code is not prohibitive merely cautionary. The Board also noted that you admit to having been evaluated by multiple mental health professionals during your parents' efforts to identify a diagnosis but denied that fact in reporting your medical history. In the Board's opinion, this constitutes fraudulent enlistment. Finally, the Board determined you were fortunate not to receive a RE-4 code based on your fraudulent conduct. As a result, the Board concluded you were appropriately assigned a RE-3P reentry code and it remains supported by 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 elemency in your case. Accordingly, given the totality of the circumstances, the Board determined that your request does not merit relief.

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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,

