



**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: 4057-22  
Ref: Signature Date

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Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to 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 5 October 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, 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). The Board also considered an advisory opinion (AO) from a qualified medical professional that was previously provided to you. Although you were provided an opportunity to comment on the AO, you chose not to do so.

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 Navy and began a period of active service on 29 October 2009. Prior to your enlistment into the Navy, on 14 July 2009, you stated on your Report of Medical History (SF 93), and report of medical examination, that you had no significant past medical history. On

9 December 2009, you underwent a medical/psychiatric evaluation, and diagnosed with specific situational phobia, existing prior to service (EPTS), and avoidant personality disorder, EPTS. As a result of the foregoing, 49 days following your entry onto active duty, entry-level administrative separation proceedings were initiated as a result of your defective enlistment and induction due to fraudulent enlistment. On the same day, you waived your right to consult with counsel. The separation authority approved and directed your separation with an uncharacterized character of service by reason of fraudulent entry into military service. On 22 December 2009, you were so discharged.

The Board carefully considered all potentially mitigating factors to determine whether the interests of justice warrant relief in your case in accordance with the Kurta, Hagel, and Wilkie Memos. These included, but were not limited to, your desire to change your character of service to Honorable and contention that you were informed by your recruiter not to disclose your medical history. You also attribute your youth, and lack of knowledge upon your enlistment as the basis for your failure to disclose your medical history. For purposes of clemency consideration, the Board noted you provided supporting documentation describing post-service accomplishments but no advocacy letters.

Because you claim that a mental health condition affected your separation, the Board considered the AO. The AO stated in pertinent part:

During his initial training, the Petitioner was appropriately referred for psychological evaluation during his enlistment and properly evaluated. His mental health diagnoses were based on observed behaviors and performance during his period of service, the information he chose to disclose, and the psychological evaluation performed by the mental health clinician. A personality disorder diagnosis is pre-existing to military service by definition, and indicates lifelong characterological traits unsuitable for military service. Unfortunately, his personal statement and available records do not establish a nexus with his misconduct, as his separation was due to failure to disclose a history of mental health treatment. Military service provides unique stressors, and it is likely if his mental health history had been known during his enlistment physical he would not have been accepted into service. Additional records (e.g., post-service mental health records describing the Petitioner's diagnosis, symptoms, and their specific link to his misconduct) would aid in rendering an alternate opinion.

The AO concluded, "it is my considered clinical opinion there is insufficient evidence of a mental health condition that may be attributed to military service. There is insufficient evidence the circumstances surrounding his separation from service could be attributed to a mental health condition."

Based upon this review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. The Board concluded you were appropriately separated for fraudulent entry based on your admission that you purposefully failed to disclose your preservice medical history that would have been disqualifying for enlistment. Further, applicable regulations authorize an entry-level separation if separation action is initiated within the first 180

days of continuous active service. As a result, the Board found no error or injustice with your uncharacterized entry-level separation. While there are exceptions that allow for the assignment of a characterized separation under extraordinary circumstances, the Board found no such circumstances in your case. Additionally, absent a material error or injustice, the Board declined to summarily upgrade a discharge solely for the purpose of facilitating veterans' benefits, or enhancing educational or employment opportunities. Finally, the Board concurred with the AO that there is insufficient evidence the circumstances surrounding your separation from service could be attributed to a mental health condition. The Board noted you failed to provide any evidence to substantiate your contention that you were told not to disclose your medical history. As a result, the Board determined your conduct and administrative separation for fraudulent entry within your first 180 days of active duty service continue to support your uncharacterized entry-level separation. While the Board commends your post-discharge accomplishments, even in light of the Wilkie Memo and reviewing the record holistically, the Board did not find evidence of an error or injustice that warrants upgrading your characterization of service or granting clemency in the form of an upgraded characterization of service. 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,

10/21/2022

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Executive Director

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