



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. 4999-22
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.

A three-member panel of the Board, sitting in executive session, considered your application on 26 October 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 25 August 2017 guidance from the Office of the Under Secretary of Defense for Personnel and Readiness (Kurta Memo). Additionally, the Board considered a 1 September 2023 advisory opinion (AO) furnished by qualified medical professional. Although you were provided an opportunity to respond to the AO, you chose not to do so.

You previously applied to this Board for relief and were denied on 25 May 2017, 7 November 2019, and 17 February 2022.

As set forth in its most recent decision letter from 2022, and based on a review of your service record, you enlisted in the Navy and commenced a period of active duty on 1 June 2000. From March 2007 to July 2007, you served in █. According to your petition, while you were in Iraq, you witnessed the explosion of improvised explosive devices and mortars. In July 2009, you were diagnosed with Adjustment Disorder for expressing depressed mood after signing an extension to remain in █ without your dependents. After this, you were eventually declared fit for full duty. You continued to serve without incident until 29 May 2015, when you expressed suicidal ideation, and you were seen at a medical clinic. On 14 June 2015, you were diagnosed with Adjustment Disorder after expressing a number of symptoms that could not be medically explained, including expressing anxiety at the thought of returning to your position,

and you were recommended for administrative separation. On 7 July 2015, you were evaluated by the Senior Medical Officer (SMO) aboard [REDACTED]. According to the SMO's evaluation, you did not have an unfitting disability at the time. On 9 July 2015, you were notified of the initiation of administrative separation processing and your rights in connection therewith. On 30 July 2015, the discharge authority directed that you be discharge due to a condition, not a disability. On 20 August 2015, you were so discharged.

You previously filed a petition with this Board in 2016 seeking the award of a military disability retirement. In connection with your petition, this Board obtained an AO from a qualified medical professional, who carefully reviewed your medical and service records, and after a full analysis, recommended that no relief be granted as follows:

In summary, the evidence does not support the applicant's request for a disability retirement. This is due to the lack of objective evidence any medical condition, either separately, or in combination, significantly impaired the applicant's duty performance or that his duty performance was substandard at the time of separation and the minimal documentation of treatment for his medical conditions at that time as well. Had referral to the PEB occurred, a finding of fit to continue naval service would have been the likely result.

On 25 May 2017, concurring with the AO, this Board denied your petition. In 2019, you requested reconsideration of your petition. On 7 November 2019, this Board denied your request for reconsideration, finding that the preponderance of evidence did not support your petition. In its letter, the Board informed you that in reaching its decision, it applied liberal consideration to your assertions, and that despite its application of special liberal consideration, it nevertheless found the evidence you provided in support of your petition to be insufficient, as follows:

The Board carefully considered your arguments that you deserve to be placed on the disability retirement list under the liberal consideration policy. You assert that you were unfit for continued naval service based on disability ratings received from the Department of Veterans Affairs (VA). Unfortunately, the Board disagreed with your rationale for relief. The Board again substantially concurred with the advisory opinion contained in Director, CORB letter 5220 CORB: 002 of 3 April 2017. Specifically, despite applying liberal consideration to the facts of your case, the Board found insufficient evidence you were unfit for continued naval service due to disability conditions rated by the VA. The Board noted you were diagnosed with adjustment disorder and administratively separated for convenience of the government based on a condition not considered a disability. As pointed out in the advisory opinion, you were performing your duties well enough to be selected for Chief Petty Officer in the months leading to your adjustment disorder diagnosis. So despite applying liberal consideration to your case, absent specific evidence that shows how the VA rated disability conditions prevented you from performing the duties of your office, grade, rank or rating, the Board felt the preponderance of the evidence did not support relief in your case. Accordingly, the Board found insufficient evidence of error or injustice to warrant a change to your record.

In 2021, you filed another petition with this Board, in which you asserted that you were misdiagnosed by the Navy with Adjustment Disorder when the correct diagnosis should have been combat Post-Traumatic Stress Disorder (PTSD) entitling you to an assessment by a Medical Evaluation Board and military disability retirement. You further asserted that you were found to have service connected disabilities by the Department of Veterans Affairs (VA), and you provided a 5 November 2020 report of a psychologist in support of your petition. In its review of your petition, the board obtained another AO dated 5 January 2022. The AO provided a lengthy analysis of your medical contentions in rendering an unfavorable finding, concluding that the “submitted evidence does not sufficiently support a diagnosis of PTSD during active service.” The Board informed you by letter dated 23 March 2022 that it had denied your petition, explaining in part:

the Board concluded that the preponderance of the evidence did not show the presence or adverse effects from a mental disorder over the six-year period between 2009 and your administrative separation processing. The Board found this lack of mental health symptoms during this period more persuasive than your more recent post-discharge diagnosis for PTSD. Further, the Board noted that your PTSD diagnosis was issued based on a lower standard of proof. In addition, the fact that the VA rated you for service connected disability conditions did not persuade the Board these conditions were unfitting at the time of your discharge from the Navy because 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. Accordingly, the Board found insufficient evidence of error or injustice to warrant a change to your record.

You then filed your current petition for reconsideration, in which you again requested the award of a military disability retirement with a rating of at least 30% or to be referred to the Integrated, or Legacy, Disability Evaluation System (DES). In support of your request for reconsideration, you assert that you were misdiagnosed by the Navy with Adjustment Disorder when the correct diagnosis should have been combat PTSD. You explain that your command relied on a misdiagnosis in making its decision to administratively separate you from service. As new matter, you included a letter from a psychologist dated 21 March 2022.

In order to assist it in its review of your current request for reconsideration, the Board obtained another AO, from a different author than had provided the AOs your previous petitions. According to the 1 September 2023 AO, which was considered unfavorable to your request, in part:

Petitioner’s previous requests for medical retirement in applications to the BCNR in 2016, 2019, and 2021, were adjudicated by the Board and included medical review of clinical evidence in advisory opinions from 4/3/2017 and 1/5/2022.

In this current Advisory Opinion, particular consideration was given to the previously submitted 12/31/2015 VA Rating Decision, 11/20/2020 Independent Medical Evaluation by Dr. [], Ph.D., Clinical Psychologist, 1/11/2021 affidavit

from Petitioner, and the newly submitted 3/21/2022 Psychological Evaluation Report from Dr. [], Ph.D., Clinical Psychologist: Of note, these documents cite post-discharge reporting by the Petitioner in their evaluations.

The 12/31/2015 VA Rating Decision granted service-connection and 50% disability for PTSD effective 8/21/2015. The rating decision was informed by a 10/28/2015 VA Disability Benefit Questionnaire for PTSD (which was not available for review) in which the examiner opined the PTSD was “at least as likely as not due to your military service.” The rating decision cited evidence reported by Petitioner that he feared for his life in Iraq, experienced traumatic stressors during military service, and continued with ongoing intrusive symptoms.”

The 11/20/2020 Independent Medical Evaluation by Dr. [] was previously reviewed and addressed in the 1/5/2022 Advisory Opinion. Based on his review of clinical evidence, clinical evaluation, and Petitioner’s reported history, Dr. [] provided expert opinion that Petitioner was misdiagnosed with Adjustment Disorder, and that at the time of discharge met criteria for PTSD and should have been further evaluated and granted a medical retirement.

In his 1/11/2021 affidavit, Petitioner cited traumatic stressors of: 1) 2007 deployment stressors of guilt over death of father and experiences when he would pick up/greet personnel from [] Airport 5-6 times a week and during the course of his trips “outside the wire” he frequently “witnessed mortars and IEDs detonations,” and 2) in 2015, learning of the death of a close friend, a fellow Chief Personnel Specialist, who died while standing watch in [] and subsequently being assigned the same desk on his ship where his friend had worked. He contended these traumatic events resulted the development of PTSD symptoms and “fear for my life whenever I would hear a super hornet take off or a fire/casualty drill.”

In the 3/21/2022 Psychological Evaluation Report by Dr. [], Dr. [] provided expert opinion that based on her review of clinical evidence and psychological evaluation of Petitioner, that at the time of the evaluation, he met criteria for PTSD, Chronic and that it was “at least as likely as not that his acquired psychiatric disorder [PTSD]” was related to his military service. Dr. [] stated this was consistent with the 2015 VA Rating Decision and 2020 medical opinion by Dr. []. She stated she did not agree with the in-service diagnosis of Adjustment Disorder as by her evaluation, Petitioner’s symptoms had persisted for six years and met criteria for PTSD. She further opined Petitioner should have been considered for medical retirement instead of administrative separation.

Dr. [] noted Petitioner’s report he was hospitalized aboard the [] from June to August 2014 for suicidal ideation. However, there were no available clinical records available to substantiate this report. Subsequent to this purported hospitalization, in his 9/19/2014 Annual Periodic Health Assessment,

Petitioner reported “excellent general overall feeling/health” and was negative on the PHQ-2 Depression Screen.

Though Petitioner has contended in-service PTSD and denial of referral to a MEB/PEB for military retirement, his evidence relies heavily on post-discharge VA Disability Rating Decisions and expert clinical opinions incorporating Petitioner’s reporting and post-discharge personal declarations, which are not corroborated by the primary source personnel and clinical records contemporary to his military service. After careful review and consideration of all available in-service and post-discharge evidence, I attribute greater weight to the documented inservice evidence and in my medical opinion, consider the preponderance of evidence insufficient to support Petitioner’s contentions and request for relief.

The AO concluded, “in my medical opinion, the preponderance of objective clinical evidence provides insufficient support for Petitioner’s contention that at the time of his discharge he was unfit for continued military service and should have been medically retired. Should any further evidence surface supporting unfitness or a disability retirement, resubmission would be appropriate.”

The Board carefully reviewed your request for reconsideration and the new material that you provided in support of your petition, and disagreed with your rationale for relief. In keeping with the letter and spirit of the Kurta Memo, the Board gave liberal and special consideration to your record of service, and your contentions about any traumatic or stressful events you experienced, and their possible adverse impact on your service. In reaching its decision, the Board observed that your assertion that you should have received a medical retirement would have required that you be processed through the DES while you were on active duty. In order to qualify for military disability benefits through the DES 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 or 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.

The Board concluded the preponderance of the evidence does not support a finding that you met the criteria for unfitness as defined within the DES at the time of your discharge. At the outset the Board determined that the new matter that you provided in your current petition was insufficient to change its prior findings. The most recent AO provided a thorough review of this new medical opinion that you provided, and the AO gave greater weight to the “documented in service evidence” in finding that the preponderance of evidence was insufficient to support your contentions and request for relief.

In its comprehensive review of the entirety of your request, the Board determined that, even assuming that your PTSD arose during your service, such condition did not amount to unfitting conditions within the meaning of the DES. In reaching its findings, the Board concurred with the overall rationale of the most recent AO, observing that it sufficiently considered the relevant

factors and reached a reasonable conclusion. Notably, the Board observed that, while you were diagnosed with mental health conditions, there is no evidence that any medical provider considered your conditions to warrant referral to a medical board for a determination of fitness for duty within the DES. Rather, the contemporaneous evidence from your time of active duty, including the finding by your ship's SMO, determined that you did not have an unfitting condition within the meaning of the DES, but that you had a desire to be separated from the Navy due to your conditions that were not considered to be unfitting within the meaning of the DES. Finding that you had a condition that made you not adaptable to naval service is different from having a condition that is considered unfitting within the meaning of the DES. Even assuming, *arguendo*, that your condition may have been labeled as PTSD vice Adjustment Disorder, a mere diagnosis of such a condition does not necessarily translate to a medical disability retirement. As noted, such condition must be considered to be unfitting and prevent you from working in your rate. Here, there is no evidence that you had such a disabling condition, and, had you been placed into the DES, the finding would likely have been that you were fit to continue active duty.

The Board noted that, with respect to your reliance on findings by the VA, as it explained to you before, the Board observed that the VA does not make determinations as to fitness for service as contemplated within the service DES. Rather, 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. In sum, 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,

11/8/2023

