



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: 5584-22

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 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 21 November 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 the advisory opinion (AO) furnished by a qualified mental health professional dated 4 October 2022, which was previously provided to you. Although you were afforded an opportunity to submit an AO rebuttal, you chose not to do so.

Regarding your request for a personal appearance, the Board determined that a personal appearance with or without counsel will not materially add to their understanding of the issue(s) 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 Marine Corps and began a period of active duty on 27 November 2006. On 30 November 2006, you were diagnosed by a medical officer with major depressive disorder,

recurrent, and severe with major psychiatric features. On 8 December 2006, you were counseled concerning your RE-3F reenlistment code by reason of fraudulent entry due to a medical condition. On 13 December 2006, you were discharged with an uncharacterized, entry level separation by reason of fraudulent entry into military service.

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 reentry code and contentions that there was misinformation on discharge paperwork, to include medications that you were not taking, and you were not given sufficient time to explain yourself due to threats of confinement. You further contend that you were uninformed about your right to have a counsel. For purposes of clemency consideration, the Board noted you provided three letters from your medical providers in support of your application.

As part of the Board's review, the Board considered the AO. The AO stated in pertinent part:

The Petitioner was diagnosed with depression pre-service. There is insufficient evidence that a nexus occurs between the Petitioner's post-service mental health condition and his reenlistment code and/or entry level separation.

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, as it existed prior to service. There is insufficient evidence that his reenlistment code was in error."

After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board noted you were diagnosed with a preexisting major depressive disorder that formed the basis for your fraudulent entry discharge from the Marine Corps. Additionally, the Board concurred with the AO that there is insufficient evidence of a mental health condition that may be attributed to military service. Finally, the Board found no evidence in your record to support substantiate your contentions. As a result, the Board determined that your discharge and assigned reentry code remains appropriate. 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 changing your reentry code or granting relief as a matter of clemency or equity. 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 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 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, _____

12/7/2022



Executive Director

