



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

█  
Docket No. 5775-22  
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.

A three-member panel of the Board, sitting in executive session, considered your application on 19 December 2022. The names and votes of the members of the panel 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.

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.

A review of your record shows that you enlisted in the Navy and commenced a period of active duty on 7 January 1999. On 21 November 2013 and again on 10 December 2013, you were arrested by civilian authorities for driving a vehicle under the influence of alcohol. You were subsequently found guilty in civilian court of each of these offenses. You were notified of the initiation of administrative separation processing and your rights in connection therewith, and you requested a hearing before an administrative separation board (ASB). Your ASB was held on 14 October 2014. The ASB found that you committed misconduct as a result of your civilian convictions, and the majority voted that you should be retained in the Navy. The separation authority, however, directed that you be discharged with an honorable characterization of service. Prior to separation, you underwent a pre-separation physical evaluation. Your medical records reflect that on 12 January 2016, you denied symptoms of post-traumatic stress disorder (PTSD). On 13 January 2016, you were discharged.

You filed a petition with this Board in 2016. In your petition, among other things, you provided information that the U.S. Department of Veterans Affairs (VA) awarded you a service connected disability for PTSD. In order to assist it in reviewing your petition, the Board obtained the 5 April 2017 advisory opinion (AO) of a qualified medical professional. According to the AO:

I have reviewed the submitted records. [Petitioner] was in the Navy for just over 17 years of active duty. He was administratively separated from the Navy on 13 January 2016 for misconduct namely Driving Under the Influence on two occasions in November and December of 2013. [Petitioner] claims he was not screened for PTSD prior to his administrative separation and was subsequently diagnosed with non-combat related service connected PTSD at the Veteran's Administration. Review of [Petitioner's] Electronic Medical Record indicates that on 12 January 2016 he had a psychiatric evaluation where the sailor denied symptoms consistent with PTSD or any other mental health condition. He was diagnosed with Adjustment Disorder related to stress from his administrative separation as well as Alcohol dependence, uncomplicated.

Based on the preponderance of the evidence, in my opinion, there is insufficient evidence to substantiate that [Petitioner] experienced PTSD or other mental health conditions that contributed to his misconduct and subsequent separation.

The Board informed you that it denied your petition by letter dated 23 August 2017. In denying your petition, the Board relied in part on the AO. In 2017, you filed a request for reconsideration of your denied petition. By letter dated 2 May 2018, the Board denied your request for reconsideration. In each case, the Board liberally considered your assertion that you suffer from a mental health condition, notably PTSD, and it reviewed your petitions in light of governing clarifying guidance applicable to service members with mental health conditions, including PTSD. In each case the Board found that the materials you provided were insufficient to grant your requested relief.

In your current petition, you request to have your separation code and reentry code changed to reflect medical retirement. In support of your request, you contend that the changes you request are required by the 25 August 2017 guidance from the Office of the Under Secretary of Defense for Personnel and Readiness.

The Board carefully reviewed all of your contentions and the material you submitted in support of your petition, including the medical documentation that you provided, and the Board disagreed with your rationale for relief. In reaching its decision, the Board observed that the memorandum of 25 August 2017 you cite is inapplicable to your request for a medical retirement. Rather, in order to qualify for military disability benefits through the Disability Evaluation System 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 of 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.

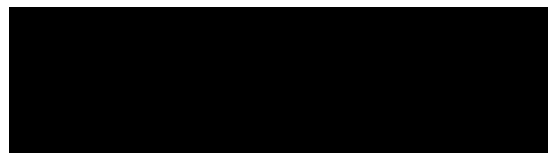
On its review of all of the materials, including the documentation that you provided, the Board did not observe any support for the award of a medical retirement from the Navy. Upon review, the Board concurred with the opinion of the 5 April 2017 AO, which found insufficient evidence to substantiate that you experienced PTSD or other mental health conditions while you were in service. The Board acknowledged that the purpose of that AO was to determine whether you had a mental health condition that contributed to your misconduct, but the Board determined that its findings equally support the determination that you did not exhibit signs of a medical condition while you were in service as defined within the Disability Evaluation System. There is also no medical evidence in your records recommending that you should be referred to a medical evaluation board while you were in service. Similarly, you did not provide any medical documentation that was contemporaneous to your service that tended to demonstrate that you were discharged from the service due to an unfitting medical condition. Rather, the record evidence demonstrates that you were discharged due to your civilian convictions. In fact, contrary to an assertion you were unfit to serve, the majority of the members of your ASB voted that you should be retained in the Navy, which of course is a strong endorsement that you were in fact fit for continued service in the Navy.

With respect to your prior assertion concerning findings by the VA, the fact that the VA may have rated you for a disability condition that it determined was service connected to your time in the service 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, based on all of the foregoing, the Board denied your petition.

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,

1/17/2023

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Deputy Director

Signed by: 