



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

█  
Docket No. 5886-22  
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.

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 2 November 2023. 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, applicable statutes, regulations, and policies, to include the Kurta Memo. In addition, the Board considered the 25 September 2023 Advisory Opinion (AO) from a Licensed Clinical Psychiatrist. Although you were provided an opportunity to respond to the AO, you chose not to do so.

A review of your record revealed that you joined the Naval Reserve on 19 September 2002; you obtained the rank of petty officer second class. On 31 March 2010, Navy Recruiting Command determined you did not meet standards for the Unrestricted Line due to macular dystrophy and you were approved for restricted line/Staff Corps. You were commissioned and mobilized on active duty on 17 May 2011, and later released from active duty and transferred to the Naval Reserve on 30 September 2011. On 8 August 2016, you underwent a physical examination; you were assessed as qualified to augment-no disqualifying medical factors were found in your record. You subsequently served on active duty in support of Operation Spartan Shield, Bahrain. While deployed, you attended a sleep education class and was diagnosed with insomnia in March 2017. However, you were returned to duty without limitations. Your 21 July 2017 Post Deployment Health Assessment (PDHA) states you were assessed with organic sleep apnea,

hypertension (stable), and pain in your right shoulder, left knee, and right ankle. On 26 July 2017, during a follow up on the PDHA, you were considered physically qualified to demobilize and return to your home of record. You were released from active duty, on 5 September 2017, and returned to the Navy Reserve at the completion of required active service with an Honorable discharge.

On 2 January 2018, you started to be seen at the Richmond Department of Veterans Affairs (VA) for sleep apnea and pain in your right shoulder, left knee, and right ankle. On 30 October 2020, you were notified that as a result of having twice failed selection for promotion to the next higher grade that you would be honorably discharged from the Navy Reserve on 1 May 2021, unless you were authorized continuation. You requested a continuation, which was approved until 30 Sep 21, and you were instructed that if you were not selected for promotion to O-4 at the Fiscal Year 2022 Promotion Selection board, you would be separated from the Naval Reserve on 30 Sep 2021. You were not selected for promotion and you were honorably discharged from the Naval Reserve 30 September 2021.

For this petition, you request a medical retirement. As evidence, you provided a Department of Veterans Affairs (VA) Benefits letter dated 1 August 2022, showing you received a 90% rating. The Board carefully reviewed your petition and the 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, to include whether they qualified you for the military disability benefits you seek.

Based on your assertion on your DD Form 149 that you incurred a mental health condition, post-traumatic stress disorder (PTSD) during your military service, a qualified mental health professional reviewed your request for correction to your record and provided the Board with an AO. The AO stated in pertinent part:

Review of the available objective clinical and non-clinical evidence documented Petitioner adequately executed the full range of responsibilities of his rate and rank up through his separation from the Navy Reserves.

The AO concluded, “in my medical opinion, there was no objective clinical evidence that Petitioner (1) suffered from a medical or mental health condition that prevented him from reasonably performing the duties of his office, grade, rank, MOS, or rating including those duties associated with his Reserve Service, (2) represented an obvious medical risk to the health of the member or to the health or safety of other members, or (3) the medical condition imposed unreasonable requirements on the military to maintain or protect the Service member... 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.”

The Board concurred with the AO that there was insufficient evidence of a mental health condition in-service. The Board noted that in January 2021, you requested a continuation on

active duty, endorsing the fact that you had the capability physically and mentally to be an O-4 in the Naval Reserve and to continue on active duty. Moreover, the Board was not persuaded by your VA evidence since 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,

12/1/2023

