



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

█
Docket No. 6819-22
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 16 November 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 Kurta Memo. The Board also considered the 4 October 2023 advisory opinion (AO) from a qualified medical professional, a copy of which was provided to you. Although you were provided an opportunity to respond to the AO, you chose not to do so.

A review of your record shows that you enlisted in the Navy and commenced a period of active duty on 20 July 2020. During your service, you were dropped from Basic Underwater Demolition/SEAL (BUD/S) training and, thereafter, you eventually sought mental health treatment due to occupational stressors and your dissatisfaction with your naval service. The AO provides a more comprehensive recitation of your service medical background. Ultimately, you were recommended to be discharged. According to the AO, on 8 July 2021, you underwent a separation physical examination. During the separation physical examination, you denied any medical or mental health complaints or medical concerns and the examiner noted that he diagnosed you with Adjustment Disorder and Administrative Separation. According to the examination, you were cleared to separate without further referrals or consultations and you were released without limitations.

Your medical record reflects a statement from the discharge authority, dated 16 June 2021, stating that you had been “recommended for an administrative separation based on an acute adjustment disorder in context of the service member's dissatisfaction and/or failure to adapt to military service and poor motivation to continue such. There is no evidence of PTSD/TBI or other ratable disabling mental or physical medical condition. This reviewer concurs with the diagnosis and administrative separation recommendations.” Your administrative separation documents do not appear to be in your service record but, on 30 August 2021, you were discharged due to condition, not a disability. You provided documentation that, post-service, you were awarded by the Department of Veterans’ Affairs (VA) a 70% service connected disability due to post-traumatic stress disorder (PTSD).

In your petition, you request to be awarded a medical disability retirement based on PTSD. In support of your request, you contend that you were misdiagnosed with adjustment disorder after you failed BUD/S training and that, post-service, you were diagnosed with PTSD as a result of traumatic experiences you suffered during BUD/S training.

In order to assist it in reviewing your petition, the Board obtained the 4 October 2023 AO. According to the AO, which was considered unfavorable to your request:

Petitioner’s in-service diagnosis of Adjustment Disorder with Mixed Anxiety and Depressed Mood is well documented in his service medical record, as are the numerous mental health evaluations and courses of individual and group therapy, as well as other modes of psychological interventions, Petitioner received during his military service. Through his serial and recurrent psychological assessments, no history of complaints of symptoms indicative of PTSD were ever elicited, nor endorsed by the Petitioner. Specific examinations and clinical reviews were performed during the course of his treatment, recommendation for administrative separation, and administrative processing to screen for TBI and PTSD, which were uniformly negative. Petitioner’s mental health condition was consistently attributed to his dissatisfaction with military occupational stressors, exacerbated after he failed BUDS training.

Review of objective military clinical records showed Petitioner consistently experienced depressive and anxiety symptoms in the context of his dissatisfaction with military service. This inability to adapt to the military environment eventually led to findings of unsuitability for continued Naval service. This diagnosis and finding of unsuitability for Naval service was consistent across multiple mental health providers, and supported by serial psychological assessments and mental status examinations.

Review of the available objective clinical and non-clinical evidence documented Petitioner adequately executed the responsibilities of his rate and rank up through his discharge, though limited by his inability to adapt to the military environment and dissatisfaction with continuing to serve after failing BUDS.

After review of all available in-service objective clinical evidence, in my medical opinion, the preponderance of evidence fails to show that Petitioner suffered from PTSD, identified any traumatic stressors while in the service, or exhibited psychological symptoms indicative of PTSD. His mental health condition was appropriately diagnosed as an Adjustment Disorder (failure to adapt to military environment) which rendered him unsuitable for continued service.

The AO concluded, “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 due to PTSD and should have been medically retired.”

The Board reviewed your petition and the material that you provided in support, 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 Disability Evaluation System (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 separation. In its comprehensive review of the entirety of your request, the Board determined that, even assuming, *arguendo*, you were diagnosed with PTSD while you were on active duty, there is no evidence that any medical provider considered such conditions to warrant referral to a medical board for a determination of fitness for duty within the DES. Service members routinely serve in the naval services with PTSD and other mental health diagnoses, and such a diagnosis does not necessarily result in a finding of an unfitting condition. In your case, the Board substantially concurred with the findings of the AO, observing that it carefully reviewed the evidence and reached a reasonable conclusion, including that your depressive and anxiety symptoms arose in the context of his dissatisfaction with military service. In light of the finding of the AO, which the Board determined was supported by objective medical evidence from your time in service, the Board determined that there was insufficient evidence of an unfitting condition while you were in service. The Board further noted that there is no indication in your record, and you provided none, that you were found to be unfit to perform your duties within the meaning of the Disability Evaluation System, and it observed that you in fact received an appropriate pre-separation physical, which found you fit for separation. 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

