

DEPARTMENT OF THE NAVY

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

> Docket No: 6977-22 Ref: Signature date



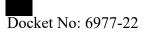
Dear Petitioner:

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 5 December 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 21 November 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 Navy and began a period of active duty on 21 January 1986. On 10 March 1986, a medical officer diagnosed you with Atypical Psychosis, Existed Prior to Entry. On



18 March 1986, a Medical Evaluation Board (MEB) recommended that you were administratively separated from service by reason of erroneous enlistment. On the same date, you were notified of the initiation of administrative separation proceedings by reason of defective enlistment due to erroneous enlistment, at which point, you decided to waive your procedural rights.

Unfortunately, some documents pertinent to your administrative separation are not in your official military personnel file (OMPF). Notwithstanding, the Board relies on a presumption of regularity to support the official actions of public officers and, in the absence of substantial evidence to the contrary, will presume that they have properly discharged their official duties. Your Certificate of Release or Discharge from Active Duty (DD Form 214), reveals that you were separated from the Navy on 2 April 1986 with an uncharacterized Entry Level Separation, your narrative reason for separation is "Erroneous Enlistment – Enlisted, Reenlisted, Extended, or Inducted in Error," your separation code is "JFC," and your reenlistment code is "RE-3E."

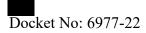
The Board carefully considered all potentially mitigating factors to determine whether the interests of justice warrant relief in your case in accordance with the Kurta, Hagel, and Wilkie Memos. These included, but were not limited to, your desire for an upgrade to your reenlistment code (RE) and your contention that your RE code was issued erroneously. For purposes of clemency and equity consideration, the Board noted you did not provide supporting documentation describing post-service accomplishments or advocacy letters.

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

The Petitioner was appropriately referred for psychological evaluation during his enlistment and properly evaluated during a hospitalization and medical board evaluation. There is sufficient evidence that he was diagnosed in service with Atypical Psychosis and that his condition worsened during initial stressors of basic training. There is insufficient evidence that his enlistment was erroneous, as it is not reasonable to assume that he would have been aware of his condition and/or symptoms during the prodromal phase of psychosis in order to report it.

The AO concluded, "it is my considered clinical opinion there is sufficient evidence of a mental health condition that existed during military service. There is sufficient evidence that his condition worsened in service."

After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. The Board found no error or injustice to the RE code you were assigned. The record reflects, upon your entrance into active service you failed to disclose your significant past medical history that would have been disqualifying for induction into the Navy. Therefore, the Board determined your administrative separation by reason of erroneous enlistment and the assignment of a RE-3E code to be appropriate. In making this finding, the Board disagreed with the AO that there was insufficient evidence that your enlistment was erroneous. The Board noted the AO's rationale explained precisely why a fraudulent enlistment discharge was not supported by the evidence in your case. However, the Board found that the Navy acted properly in discharging you for an erroneous enlistment because it was reasonable to assume you were not sufficiently aware of your condition or symptoms to be able to accurately disclose them during



your enlistment processing. 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,		
	12/29/2022	
Executive Director		
Signed by:		