



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. 8672-22
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.

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 9 March 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 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) (collectively the "Clarifying Guidance"). The Board also considered the 30 December 2022 advisory opinion (AO) from a qualified mental health professional, a copy of which was provided to you and to which you did not provide a response.

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 Marine Corps and commenced a period of active duty on 16 July 2012. In September 2015, you were issued a military protective order (MPO) directing that you stay away from your wife. The MPO was lifted in November 2015 after your wife and other supporters sent letters to your command requesting that the MPO be removed. In December 2015, you successfully completed substance abuse educational treatment. On 21 April 2016, you were formally counseled regarding your lack of financial responsibility and

lack of integrity. On 13 May 2016, you were formally counseled regarding making threatening comments to Department of Social Services personnel.

On 1 December 2016, in connection with a forthcoming general court-martial, you underwent a mental health inquiry pursuant to Rule of Court-Martial 706. The result of this inquiry is not set forth in your service record. On 28 April 2017, you pleaded guilty at general court-martial to assault consummated by battery, adultery, communicating a threat, disobedience, and child endangerment. As part of your punishment you were awarded a Dishonorable Discharge. Thereafter, your case was reviewed in the appellate process and you were placed on appellate leave on 27 August 2018, and discharged by reason of court-martial on 5 October 2018. You were issued an RE-4 reentry code.

In your petition, you request to receive a medical discharge. In addition, you have requested that your discharge characterization be upgraded to Honorable, and that you receive an RE-1 reentry code, and a Secretarial Authority narrative reason for discharge. Finally, you also request that the Board apply liberal consideration and remove all derogatory information in your military file. In support of your request, you assert that you were experiencing significant behavioral health issues at the time of your service. You also argue that your discharge was unfair at the time, remains so now, and that it is “both substantively and procedurally defective.”

In order to assist it in reviewing your petition, the Board obtained the 30 December 2022 AO. According to the AO:

Petitioner was appropriately referred for psychological evaluation during his enlistment and properly evaluated over more than two years of outpatient treatment. His personality disorder diagnosis was conservative and based on observed behaviors and performance during his period of service, the information he chose to disclose, and the psychological evaluations performed over time.

Although other mental health diagnoses were listed at various times in his EMR (Adjustment Disorder, Anxiety Disorder, and PTSD on one occasion), these appear to be preliminary diagnoses describing mental health symptoms that were re-conceptualized as part of his personality disorder, as mental health clinicians increased their medical understanding of the Petitioner with increased interactions over time. The Petitioner has provided no post-service medical evidence to support his claims of an on-going diagnosis of PTSD. Additionally, his in service misconduct appears to be consistent with his diagnosed personality disorder. Additional records (e.g., post-service mental health records describing the Petitioner’s diagnosis, symptoms, and their specific link to his misconduct) may aid in rendering an alternate opinion.

The AO concluded, “it is my considered clinical opinion there is insufficient evidence of a diagnosis of PTSD that may be attributed to military service. There is insufficient evidence his misconduct could be attributed to PTSD. There is insufficient evidence his misconduct could be attributed to a mental health condition other than his diagnosed personality disorder.”

The Board carefully reviewed all of your contentions and the material you submitted in support of your petition, and the Board disagreed with your rationale for relief. The Board first addressed your request to receive a medical discharge. 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.

In reviewing your record, the Board concluded the preponderance of the evidence does not support a finding that you met the criteria for unfitness as defined within the disability evaluation system at the time of your discharge. Notably, the Board observed no evidence that you had any unfitting condition while on active duty. The Board concurred with the finding of the AO that, while you had a diagnosis of a personality disorder, there is no evidence that you had any diagnosed condition as defined under the Disability Evaluation System. Further, the Board observed the actual reason for your discharge was due to your dishonorable discharge, which was awarded by a general court-martial, and not for any medical conditions. Accordingly, considering there is no indication that you suffered from any unfitting condition as that phrase is used within the Disability Evaluation System, the Board denied your request for a medical discharge.

Upon review of the clemency matters that you presented, and in light of the fact that you have been discharged for fewer than fifteen years, the Board recommended that you file an application for review of your discharge with the Naval Discharge Review Board (NDRB). In filing such an application, you will be provided an opportunity to develop a record of your post-service clemency matters, and other matters at your discretion. Should you file with the NDRB, you would be eligible for two reviews. The first review is a Document Record Review (DR). Thereafter is a Personal Appearance Hearing (PAH) review. However, if you choose to have a PAH first, you will no longer be eligible for a second review by either DR or PAH. If your application is denied by the NDRB, you may file a petition with this Board. You may obtain additional information on the NDRB at www.secnav.navy.mil/mra/CORB/pages/ndrb/ha.aspx

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,

3/31/2023

