



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. 116-23
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 limitations 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 15 May 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 service 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)/mental health condition (MHC) (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 an advisory opinion (AO) from a qualified mental health professional. Although you were provided an opportunity to respond to the AO, you chose not to do so.

You enlisted in the United States Navy and commenced a period of service on 26 October 1987. After a period of documented unsatisfactory performance during initial training, on 15 December 1987, you were notified that you were being processed for an administrative discharge by reason of entry level performance and conduct due to your inability to complete recruit training as evidenced by your repeated failure of academic tests. You waived your right to consult with qualified counsel and your right to present written matters for consideration by the separation authority. On 17 December 1987, the separation authority directed your separation from the Navy

by reason of entry level performance and conduct and, as you served less than 180 days on active duty, you received an uncharacterized entry level separation discharge. Pursuant to the directive of the separation authority, you were assigned a “RE-4” reenlistment code.

You previously applied to this Board for a change to your narrative reason for separation and were denied relief on 1 March 2005.

The Board carefully considered all potentially mitigating and/or extenuating 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: (a) your desire to change your narrative reason for separation and reentry code, (b) your contention that you were suffering from undiagnosed mental health conditions during service, and (c) the impact that those mental health conditions had on your performance in service. For purposes of clemency and equity consideration, the Board noted you did not provide documentation related to your post-service accomplishments or character letters.

In your current petition for relief, you contend that you were suffering from undiagnosed symptoms of Attention Deficit/Hyperactivity Disorder (ADHD), which may have contributed to your performance difficulties during military service. In support of your case, you provided a letter from your civilian psychiatrist describing treatment from August 2004 to April 2019 for Depressive Disorder Not Otherwise Specified (DDNOS), Generalized Anxiety Disorder (GAD), and ADHD. You also submitted evidence of a diagnosis of mild obstructive sleep apnea and medical records from 2004, when you began mental health treatment, which discussed difficulties concentrating and impairment in work performance but did not discuss military service. As part of the Board review process, the BCNR Physician Advisor who is a licensed clinical psychologist (Ph.D.), reviewed your contentions and the available records and issued an AO dated 28 March 2023. The Ph.D. noted in pertinent part:

There is no evidence that he was diagnosed with a mental health condition in military service, or that he exhibited any psychological symptoms or behavioral changes indicative of a diagnosable mental health condition. Post-service, he has received mental health diagnoses from civilian providers that are temporally remote to military service and appear unrelated. While he may have been experiencing undiagnosed symptoms of ADHD during military service, he was appropriately screened prior to entry into service regarding medical and vocational aptitude, and deemed qualified for enlistment. Additional records (e.g., post-service mental health records describing the Petitioner’s diagnosis, symptoms, and their specific link to his military performance) may aid in rendering an alternate opinion.

The Ph.D. concluded, “it is my clinical opinion there is insufficient evidence of a mental health condition that may be attributed to military service. There is insufficient evidence to attribute the circumstances of his separation to a mental health condition.”

After thorough review, the Board concluded the potentially mitigating factors were insufficient to warrant relief. In accordance with the Kurta, Hagel, and Wilkie Memos, the Board gave

liberal and special consideration to your record of service and your contentions about undiagnosed mental health issues. In making this determination, the Board concurred with the advisory opinion that there is no evidence that you were diagnosed with a mental health condition in the military service or that you exhibited any psychological symptoms or behavioral changes indicative of a diagnosable mental health condition. Neither your enlistment screening exam nor your aptitude test identified any disqualifying medical or mental health issues. The Board agreed with the AO that the medical documentation that you provided in support of your case is temporally remote to your service and does not establish a link to your underlying performance issues.

The Board also considered your assertion that including the word “conduct” in your narrative reason for separation is unjust, as it alludes to your basis of discharge being linked to misconduct issues. The Board disagreed with your assessment and noted that the narrative reason for separation of “Entry Level Performance and Conduct” and RE-4 reenlistment code are appropriate when a Sailor is separated for failure to complete recruit training due to academic test failure. Specifically, MILPERSMAN 3630200 states, “[t]his Article authorizes the separation of a member in entry level status (in essence, during the first 180 days of service...) when he or she has been found unqualified for further service because of unsatisfactory performance *or* conduct; this can be manifested by incapability, lack of reasonable effort, failure to adapt to the military environment, minor disciplinary infractions, or *failure to satisfactorily complete indoctrination training.*” (Emphasis added). The Board concluded that this basis was the most fitting for the circumstance of your separation and was unwilling to direct a change that would inaccurately state the title of the narrative reason for separation by removing the word “conduct.” As a result, the Board concluded your narrative reason for separation and reentry code continue to be supported by your record of service. Even in light of the Wilkie Memo and reviewing the record liberally and holistically, the Board did not find evidence of an error or injustice that warrants granting you the relief you requested or granting relief as a matter of clemency or equity. 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,

5/17/2023

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Deputy Director

Signed by: █