



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. 1380-23
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 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 11 January 2024. 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.

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 entered active duty in the United States Navy on 25 January 1999. For your evaluation ending 20 March 2001, it was noted that you were the "Best Seaman in [the] Deck Department. Department's Blue Jacket of the Year and was a near second for █ Blue Jacket of the Year. Hand-picked for assignment as █, one of only two onboard; no critical navigation evolution was conducted without [your] able presence on the ship's helm." You deployed to █ in 2003. Your separation evaluation, ending on 18 December 2003, noted that you were assigned as a convoy security team leader and that your "knowledge and experience as an in-country operator contributed to [your] team, safely logging in excess of 1,000 miles for over 50 convoys throughout Iraq and Kuwait." The evaluation contained positive performance marks and recommended you for

promotion. On 24 January 2004, you were discharged with an Honorable characterization of service. Your Certificate of Release or Discharge from Active Duty (DD Form 214) states completion of required active service as the narrative reason for separation and a reentry code of RE-R1.

For this petition, you request a disability discharge. You claim you incurred the conditions of Post-Traumatic Stress Disorder (PTSD) and Traumatic Brain Injury (TBI) in-service, but they were not diagnosed until after you left service and that both conditions prevented you from continuing to serve in the Navy. You included a rating decision from the Department of Veterans Affairs (VA), as well as VA medical records to support your contention.

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. These included, but were not limited to, your contention that you deserve a disability discharge because at the time you were discharged you suffered from a mental health condition.

In reaching its decision, the Board observed that in order to qualify for military disability retirement, a medical provider must refer a service member to the disability evaluation system (DES) if they believe the member has a condition that prevents them from continued service. In this process, the service member has to be found unfit; meaning there must be evidence the service member is unable to perform the duties of their office, grade, rank or rating as a result of a qualifying disability condition. 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 DES.

You did not provide any in-service medical records showing that you were treated for a head injury or a mental health condition while on active duty. In addition, you received positive performance remarks, through the end of your active service, noting that you were able to successfully fulfill your duties of your rank and billet. Moreover, your re-entry code of RE-1A documents the service found you eligible, and recommended you for reenlistment. The Board noted you did not provide any documentation that you were denied reenlistment due to any disability conditions. Finally, 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 light of the foregoing standard applicable to the DES, the Board did not discern any facts that would support you being eligible for a disability retirement. Rather, the evidence of record demonstrates that you were discharged after successfully completing your active duty obligation and being deemed qualified for reenlistment. Therefore, 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,

2/2/2024

