



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

Docket No. 2702-23
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 24 October 2023. 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. In addition, the Board considered the 9 August 2023 Advisory Opinion (AO) from a Ph.D., Licensed Clinical Psychologist. Although you were provided an opportunity to respond to the AO, you chose not to do so.

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 Marine Corps on 9 December 2003. You deployed in support of [REDACTED] from March to September 2007. On 27 March 2008, you were counseled due to being assigned to the Body Composition Program (BCP). On 27 September 2008, you were counseled for unsatisfactory performance while assigned to BCP for not meeting goals as prescribed by the medical officer; you were granted a one-time extension of six months to meet weight control standards. On 15 Jan 2009, your command requested a medical re-evaluation to determine what progress had been

made towards weight and body fat reduction goals, and if those goals were not being met, to verify there was no underlying cause or associated disease related to your failure to meet weight goals. The medical officer verified your body composition status was not due to an underlying cause or associated disease.

On 27 March 2009, your BCP assignment expired and you were notified that you would receive a 6105 counseling entry and be processed for administrative separation. You received the counseling on 17 June 2009 and declined to make a statement. On 20 July 2009, your commanding officer recommended administrative discharge due to weight control and BCP failure. On 18 August 2009, you were involuntarily discharged for weight control failure with a General (Under Honorable Conditions) characterization of service.

In May 2022, you petitioned the Naval Discharge Review Board (NDRB) for an upgrade to your characterization of service. You argued that you were suffering from Post-Traumatic Stress Disorder after the 2007 deployment which made it difficult for you to take the steps to lose weight and stay within physical standards. The NDRB changed your characterization of service to Honorable and the narrative reason for separation to Secretarial Authority on 31 January 2023. In your petition to this Board, you request medical retirement due to the fact that you could not lose weight due to your PTSD. You provided your Department of Veterans Affairs (VA) rating for PTSD with a 70% rating 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.

In reaching its decision, the Board noted that you enlisted at your maximum height and weight standards and you underwent several medical evaluations to rule out other medical conditions as a cause for your inability to meet weight/height standards and there were no symptoms, physical examination findings, or laboratory abnormalities documented to indicate other causes for your inability to maintain height/weight standards. In addition, the Board substantially concurred with the AO that there was “no evidence [you were] diagnosed with a mental health condition during military service...[t]here is no evidence [your] difficulty in the BCP was related to mental health concerns.”

Second, 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. In denying your request for a disability discharge, the Board observed that there were no findings that you had a qualifying disability condition while you were on active duty.

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 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 concluded the preponderance of the evidence does not support a finding that you were unfit for continued naval service at the time of your separation and that your request for medical disability retirement.

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,

11/14/2023

