



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

█
Docket No. 2930-23
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 31 August 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, 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). In addition, the Board considered the 25 May 2023 Advisory Opinion (AO) from █ and your response to the AO.

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 Marine Corps on 4 October 2003. You deployed in support of █ from 16 September 2009 to 25 January 2010 and deployed in support of █ from 15 January to

5 August 2011 and 4 April to 17 December 2013. On 15 May 2017, you accepted non-judicial punishment (NJP) imposed by your commanding officer (CO) for violating Article 121 of the Uniform Code of Military Justice (UCMJ) for larceny and wrongful appropriation; specifically, for wrongfully appropriating civilian clothing and accessories from the military exchange from 1 January to 27 April 2017. On 11 February 2019, you submitted an application requesting early retirement under the Temporary Early Retirement Authority (TERA) program. On 31 May 2019, the TERA request was disapproved. On 2 September 2019, you were discharged from active duty with an Honorable characterization of service. Your Certificate of Release or Discharge from Active Duty (DD Form 214) states that the reason for separation as completion of required active service; your reentry code was RE-1A, documenting recommendation and eligibility for re-enlistment.

For your petition, you contend that you incurred several disability conditions while on active duty, to include PTSD, which should have been evaluated prior to your separation. You argue that had these conditions been properly evaluated you would have received a disability discharge. Further, you claim you were erroneously denied TERA due to the 2017 NJP, as you met all the eligibility requirements to qualify for TERA. You included your U.S. Department of Veterans Affairs (VA) rating decision and statements from Marines who served with you to support your contentions.

The Board carefully reviewed your petition and the material 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.

Regarding your request for a disability discharge, the Board found there was insufficient evidence that you were suffering from an unfitting condition prior to discharge on 2 September 2019. The Board noted you received overall positive fitness reports in your record, excluding the May 2017 adverse report required for the NJP. In reviewing your last fitness report prior to your release from active duty, the Board observed that you were recommended for promotion and retention in the Marine Corps Reserve, and your performance was described as outstanding and effective. Further the Board considered that you were not on limited duty, you were medically cleared to separate, and you received a reentry code documenting you were medically eligible to reenlist. In addition, the Board observed you did not provide any in-service medical records showing that you were treated for PTSD or that your medical providers determined any of your medical conditions warranted referral to a medical evaluation board. Moreover, the Board noted your argument for a medical discharge is based on the VA decision to issue you service connected disability ratings. The VA issues disability ratings without regard to fitness for continued naval service; a finding that is required under Navy disability regulations in order to qualify for a disability rating from the Navy.

With respect to your TERA request, the Board noted MARADMIN 135/19 states “approval of TERA requests remains an exception to policy governing the regular retirement of service members.” Moreover, “Marines requesting TERA for exception need based on personal or

professional circumstance *will be given consideration* provided they meet all other eligibility criteria and where approval is consistent with the intent of TERA as a force shaping measure and *aligns with the needs of the Marine Corps*” (emphasis added). Consequently, the Board found that, even if you met all the eligibility criteria, there was no requirement that your TERA request be granted as each application was considered based on the needs of the Marine Corps. 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 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,

9/18/2023

