



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

█  
Docket No. 3426-23  
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 2 November 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 15 September 2023 Advisory Opinion (AO) from a 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 the Marine Corps Reserve and commenced active duty on 12 February 2002. You were discharged, on 14 September 2002, after completing initial training. You were recalled to active duty and deployed in support of Operation Enduring █ from 14 January to 28 July 2003. Upon completion of your required active service, you received an Honorable characterization of service and a reentry code of RE-1A.

In the subsequent years, your record then shows that you received multiple administrative counseling entries for unauthorized absence and not being recommend for promotion to corporal due to unauthorized absences. On 20 January 2007, you were counseled for unsatisfactory participation in the Selected Marine Corps Reserve for failure to report to drill as required and failure to make any attempt to make up unexcused absences. On 16 November 2007, a Competency Review Board recommended reduction in rank to private first class (E-2) as a result of your absences. Your commanding officer concurred with the recommendation and administratively reduced you in rank. From 2003 until to your discharge from the Reserves in 2009, you did not accrue enough drill points to have a satisfactory year.

For your petition, you state you were injured in [REDACTED] underwent a medical evacuation, and a physician stated you were unfit for duty. You further contend that you incurred Post-Traumatic Stress Disorder (PTSD) during military service as a result of your deployment and you should have received an honorable medical retirement.

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.

Based on your assertions that you incurred a mental health concerns (MHC) during your military service, which might have mitigated your discharge character of service, a qualified mental health professional reviewed your request for correction to your record and provided the Board with an AO. The AO stated 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, the Department of Veterans Affairs (VA) has granted service connection for PTSD that is temporally remote to military service. Unfortunately, available records are not sufficiently detailed to establish clinical symptoms in service or provide a nexus with his misconduct. While failure to participate in the Reserves could be attributed to symptoms of avoidance related to PTSD, he remained in the Reserves for six years, and there is no evidence of interfering symptoms of PTSD until he presented to the VA. Additional records (e.g., post-service mental health records describing the Petitioner's diagnosis, symptoms, and their specific link to his Reserve participation) may aid in rendering an alternate opinion.

The AO concluded, "it is my clinical opinion there is post-service evidence from the VA of a diagnosis of PTSD that may be attributed to military service. There is insufficient evidence to attribute his failure to participate in the Reserves to PTSD."

The Board also noted that in order to qualify for military disability retirement, a medical provider refers a service member to a physical evaluation board 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; specifically, there are no records showing that you were medically evacuated or that a physician recommended you for a medical separation. Instead, the record shows that you were medically cleared to separate in 2003 with a re-entry code of RE-1A, documenting your eligibility to re-enlist based on a medical determination that you were fit for continued naval service.

Further, the Board concurred with the AO that there is insufficient evidence to attribute your failure to participate in the Reserves to PTSD. As explained in the AO, available records are not sufficiently detailed to establish clinical symptoms in service or provide a nexus with your misconduct. While failure to participate in the Reserves could be attributed to symptoms of avoidance related to PTSD, you remained in the Reserves for six years, and there is no evidence of interfering symptoms of PTSD until you presented to the VA.

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 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,

12/3/2023

