



**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. 3947-23  
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.

A three-member panel of the Board, sitting in executive session, considered your application on 11 January 2024. 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 naval record, and applicable statutes, regulations, and policies, to include the 25 August 2017 guidance from the Office of the Under Secretary of Defense for Personnel and Readiness (Kurta Memo). The Board also considered the 15 November 2023 advisory opinion (AO) from a qualified medical professional as well as your 22 December 2023 response in rebuttal to the AO.

A review of your Official Military Personnel File (OMPF) shows that you enlisted in the Navy Reserve on 29 March 2001, which is reflected as your pay entry base date. During your service in the Navy Reserve, you served several periods of active duty, which periods are documented in several Certificates of Release or Discharge from Active Duty (DD Forms 214) available in your OMPF. According to the review of available medical records performed by the preparer of the AO, in July 2008, you were medically screened for post-traumatic stress disorder (PTSD). As a result of that screening, you were referred for psychological testing to clarify a diagnosis. During that psychological testing, you reported “[you] did not directly engage in combat [but] [you] [were] frequently witnessing battle sounds and noises and a constant fear of being hurt and killed.”

In the follow-up appointment two weeks later, you reported “feeling much better and only experiences some limited sleep-related problems.” The report noted, “[h]e does not appear to manifest any substantive mental health problems at this time.” In April 2014, you participated in

a screening for Traumatic Brain Injury (TBI), “for the purpose of establishing a baseline.” According to the AO, as a result of this screening, no psychiatric diagnosis was assigned, and no follow-up evaluation was apparently indicated.

In June 2019, you completed a Compensation and Pension (C&P) Examination with the U.S. Department of Veterans’ Affairs (VA) for PTSD, which determined that you did not have a diagnosis of PTSD but did have a diagnosis of Depression, unspecified, “with onset reported during period(s) of active duty and recurrent episodes during most recent deployment.” The C&P examination cited service medical records not available for independent review, which indicated intermittent mental health concerns dating to 2002. A review of your performance evaluations reflected that you were an effective and well regarded senior enlisted leader. Your final evaluation report, through 15 September 2021, marked you as early promote and recommended your advancement to senior chief. On 27 July 2022, you received Retirement Orders and Transfer Authorization to the Retired Reserve effective 1 October 2022.

In your petition, you request that you be awarded a 30% service medical disability retirement. In support of your request, you contend that while you were in the Navy Reserve you were never offered Line of Duty Benefits (LODB). In further support of your petition, you submitted a letter from the Department of Veterans Affairs (VA) reflecting the VA awarded you a 100% service connected disability. You included an email message from Navy Personnel Command (Pers 95), dated 28 April 2023, explaining that it was unable to take action on your letter because LODB was for members of the Navy Reserve. You did not include a copy of the letter that you sent to Pers 95.

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 Clarifying Guidance, including 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. At the outset, the Board observed that service members are entitled to medical treatment for disability conditions that are incurred or aggravated while in a qualifying duty status. Pursuant to Department of Defense Instruction 1241.01 and Secretary of the Navy Instruction 1770.5, in order to qualify for such benefits, reservists are required to obtain a line of duty benefits (LODB) authorization to obtain medical and pay benefits from the military.

If a reserve member obtains an LODB, they may be referred to the Disability Evaluation System, which makes a determination as to whether the service member’s condition(s) renders the member unfit for continued service due to a qualifying disability condition. 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. Alternatively, a member may be found unfit if their disability represents a decided medical risk to the health or the member or to the welfare or safety of other members; the member’s disability imposes unreasonable requirements on the military to maintain or protect the member; or the member possesses two or more disability conditions which have an overall effect of causing unfitness even though, standing alone, are not separately unfitting.

In order to assist it in reviewing your petition, the Board obtained the AO, which was considered unfavorable to your request. According to the AO:

There is no evidence that he was diagnosed with a mental health condition in military service. Post-service, Department of Veterans Affairs (VA) has granted service connection for depression. There is no evidence of a diagnosis of PTSD that may be attributed to military service. Additional records (e.g., post-service mental health records describing the Petitioner's diagnosis, symptoms, and their specific link to his separation from service) may strengthen the opinion.

The AO concluded, "it is my clinical opinion there is insufficient evidence of a diagnosis of PTSD that may be attributed to military service. There is post-service evidence from the VA of a mental health condition that may be attributed to military service."

You were provided a copy of the AO, and responded to the AO on 22 December 2023 with additional supporting evidence. After reviewing your rebuttal evidence, the AO remained unchanged.

In reviewing your record, despite its application of special and liberal consideration, the Board concluded that the preponderance of the evidence does not support a finding that you met the criteria for placement into the Disability Evaluation System at any time in during your Navy Reserve service. At the outset, the Board determined that the evidence demonstrates that there is no evidence in your record, and you provided none, that you sought an LODB finding during any of your periods of active duty while you were in the Reserve. The Board observed that there is no indication that you sought to apply for an LODB finding, which would have been required for you to do in order to seek treatment after you were released from active duty. The only evidence you provided in this regard infers you sought an LODB after your retirement, as reflected in the email from Pers 95. The Board further observed that, in each period of active duty that you served while in the Navy Reserve, you would have received a pre-separation physical, during which a medical professional would evaluate your physical and mental condition to determine if you were suitable for discharge. There Board found no evidence that you were found to be medically unfit for discharge. To the contrary, in each period of active duty, you returned to your reserve unit, you continued to receive favorable evaluation reports, and you ultimately successfully served until you reached reserve retirement. Your failure to obtain the LODB finding, standing on its own, results in the denial of your request.

Despite your failure to obtain an LODB finding, the Board nevertheless reviewed whether there was any evidence that you should have been found unfit during any of your periods of active duty. On this point, the Board concluded that there was insufficient support for your contention that at the time of your discharge you were unfit for continued military service and should have been medically retired. In reaching its decision, the Board substantially concurred with the findings of the AO, which the Board determined to be rational and based on the evidence. The Board also found it significant that you did not provide any evidence that, while you were on active duty, any medical provider determined that you had any conditions that warranted referral to a medical board for a determination of fitness for duty within the Disability Evaluation

System. To the contrary, the service medical documentation described in the AO reflects that you did not in fact have any conditions that warranted such a referral. In addition, there is no indication that any leader in your chain of command prepared any non-medical assessment describing your inability to perform the duties of your rate. Rather, as described above, you received favorable fitness reports and recommendations for promotion, demonstrating your sustained superior performance, which is inconsistent with a Sailor suffering from a condition that made him unfit to work within his specialty.

In addition, even assuming, *arguendo*, that you had been diagnosed with PTSD while you were on active duty, it would not necessarily result in a finding that you were unfit and the eventual placement on the permanent disability retired list. Service members routinely remain on active duty with a diagnoses of PTSD without such condition considered to be unfitting. A diagnosis alone is not the standard for the award of a service disability retirement. Rather, as mentioned, to be eligible for a service disability retirement, a service member must have conditions that have been medically determined to be unfitting at the time of service. In your case, the proximate reason for your discharge was your retirement after a successful career in the Navy Reserve. Therefore, in its review and liberal consideration of all of the evidence and its careful application of the Kurta Memo, 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.

Finally, in your petition as well as your rebuttal to the AO, you cite to your rating decisions provided by the VA. To the extent you rely upon findings by the VA to support your request for a disability retirement, the Board observed that the VA is a separate organization, and it does not make determinations as to fitness for service as contemplated within the service disability evaluation system. Rather, 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.

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

