



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

■
Docket No. 4010-23
Ref: Signature Date



Dear Petitioner:

This is in reference to your reconsideration request 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 30 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, 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 3 October 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 active duty service in the Navy on 5 August 1969. Your service record shows an administrative remark, dated 8 January 1971, stating that you were not eligible for reenlistment due to physical disability and that you were assigned a reenlistment code of RE-3P. Your record of discharge states that you received an Honorable

characterization of service and the narrative reason for separation as physical disability – existing prior to entry on active duty, and not entitled to severance pay.

For this petition, the Board carefully considered all potentially mitigating factors to determine whether the interests of justice warrant relief in your case in accordance with the Kurta, Hagel, and Wilkie Memos. These included, but were not limited to, your desire for an Honorable characterization of service and contentions that you deserve a medical discharge because at the time you were discharged you suffered from a mental health condition due to an assault and threats you received while in service. For the purpose of clemency and equity consideration, you included a letter from your wife and your Department of Veterans Affairs (VA) rating decision, showing a service connection for post-traumatic stress disorder (PTSD).

Based on your assertions that you incurred a mental health concern (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 VA has granted service connection for PTSD that is temporally remote to his military service. Unfortunately, his personal statement is not sufficiently detailed to establish clinical symptoms in service or provide a nexus with his separation, which was attributed to a medical condition existing prior to service. Additional records (e.g., in-service or post-service medical records describing the Petitioner's diagnosis, symptoms, and their specific link to his separation) 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 the circumstances of his separation to PTSD."

After thorough review, the Board found no evidence of error or injustice with your record. The Board noted you already possess an Honorable characterization of service and a disability discharge. The Board concurred with the AO that there is insufficient evidence to support your separation to PTSD. As explained in the AO, the VA has granted service connection for PTSD that is temporally remote to your military service and your personal statement is not sufficiently detailed to establish clinical symptoms in service or provide a nexus with your separation. Therefore, the Board determined the finding that your disability condition existed prior to entry remains appropriate. While the Board carefully considered the evidence you submitted in mitigation, even in light of the Kurta, Hagel, and Wilkie Memos and reviewing the record liberally and holistically, the Board did not find evidence of an error or injustice that warrants granting you the relief you requested or granting relief as a matter of clemency or equity. 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,

12/19/2023

