



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. 7233-23
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 limitations 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 4 March 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 service record, and 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). The Board also considered an advisory opinion (AO) from a qualified mental health professional and your response to the AO.

You enlisted in the United States Navy and commenced a period of service on 26 October 1998. In January 1999, you were evaluated by a military psychologist "after reporting recurrent headache pain for the past month." Your physical examination at the medical clinic yielded negative findings and did not receive a formal mental health diagnosis, but "stress-related physiological response affecting headache" was noted, as well as "problems related to the social environment (parents' divorce); occupational problems." In February 1999, you were diagnosed with "Somnambulism" and recommended for separation from Navy due to this service disqualifying condition.

On 16 February 1999, you were notified that you were being processed for Uncharacterized Entry Level Separation (ELS) at the Convenience of the Government due to condition, not a physical disability, which interferes with performance of duty. You waived your right to consult with qualified counsel and to submit a statement in rebuttal. On 18 March 1999, you were discharged from the Navy with an uncharacterized ELS period of service and assigned an RE-3G reentry code.

Post-discharge, you submitted a petition to the Naval Discharge Review Board and were denied relief on 14 January 2004.

The Board carefully considered all potentially mitigating and/or extenuating 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: (a) your desire for a characterized (Honorable) period of service and a change to your narrative reason for separation and reentry code, (b) your assertion that you were struggling with undiagnosed mental health concerns during your service, and (c) the impact that your mental health had on your overall health, to include your diagnosis of “Somnambulism.” For purposes of clemency and equity consideration, the Board noted you provided evidence of your post-service accomplishments and character letters.

In your request for relief, you contend that you incurred mental health concerns due to personal stressors experienced during military service, including the divorce of your father and stepmother, and infidelity by your long-term girlfriend, which caused your sleepwalking and ultimately resulted in your separation from service. As part of the Board review process, the BCNR Physician Advisor who is a licensed clinical psychologist (Ph.D.), reviewed your contentions and the available records and issued an AO dated 24 January 2024. The Ph.D. noted in pertinent part:

During military service, the Petitioner was diagnosed with a disqualifying medical condition. There is no evidence that he was diagnosed with a mental health condition, or that he exhibited any psychological symptoms or behavioral changes indicative of a diagnosable mental health condition. He has provided no medical evidence in support of his mental health claims. Additional records (e.g., post-service mental health records describing the Petitioner’s diagnosis, symptoms, and their specific link to his separation) may aid in rendering an alternate opinion.

The Ph.D. concluded, “it is my clinical opinion there is insufficient evidence of a mental health condition that may be attributed to military service. There is insufficient evidence to attribute his separation to a mental health condition.”

In your response to the AO, you argue that your condition was, at least in part, due to the stress of a new career in the Navy in addition to the other personal stressors. You explain that you have not had a reoccurrence of sleepwalking post-service. You assert that had the Navy offered you proper medical care, he could have continued to serve. The Ph.D. reviewed your response, and as it contained no new medical information, the original recommendation remained unchanged.

After thorough review, the Board concluded the potentially mitigating factors were insufficient to warrant relief. In accordance with the Kurta, Hagel, and Wilkie Memos, the Board gave liberal and special consideration to your record of service and your contentions about undiagnosed mental health issues and your resulting condition. In making this finding, the Board concurred with the medical service providers that your “Somnambulism” was condition, not a physical disability, which was triggered by stress and interfered with the performance of your duty. The Board also concurred with the AO that there was no convincing evidence that you suffered from any type of mental health condition while on active duty, or that any such mental health condition was related to or mitigated the basis of your discharge. The Board noted that your RE-3G reentry code allows for reenlistment with proper waiver and medical evidence that you no longer suffer from a disqualifying condition. It does not appear from your record that you ever tried to reenlist in any service.

The Board highlighted that when a separation is initiated while a member is in entry-level status (within the first 180 days of enlistment), it will be described as an uncharacterized entry-level separation except in rare circumstances. After thorough review of your service record, the Board did not identify unusual circumstances involving personal conduct and performance of military duty that would support an Honorable characterization of service. As a result, the Board determined that there was no impropriety or inequity in your discharge and concluded that your Uncharacterized ELS and narrative reason for separation are accurate and should remain unchanged.

Therefore, 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,

3/11/2024

