



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

■
Docket No. 7364-23
Ref: Signature Date

Dear ■

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 26 October 2023. 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 Kurta Memo.

A review of your record shows that you entered active duty with the Marine Corps in April 2006. You deployed to ■ in 2012, earning a Navy and Marine Corps Achievement Medal for your performance. On 2 March 2013, you were discharged at the completion of your required active-duty service and issued an RE-1A reentry code, which meant that you were authorized to reenlist in the Marine Corps.

In 2020, you filed a petition with this Board seeking to be medically retired due to post-traumatic stress disorder (PTSD) and sleep apnea. You argued in support of your request that you would have chosen the medical retirement option if it were offered to you or if you were made aware of the option. The Board denied your requested relief, and advised you of its denial by letter dated 27 March 2020. In its denial letter, the Board set forth the standard that must be met to be placed into the Disability Evaluation System and to be eligible to receive a disability retirement. The Board also explained the factors it considered in denying your petition, including addressing the findings by the Department of Veterans' Affairs (VA) that you cited, as follows, with edited formatting:

The Board carefully considered your arguments that you should be placed on the disability retirement list due to post-traumatic stress disorder and sleep apnea. You assert that you were unable to perform your duties due to these disability conditions. Unfortunately, the Board disagreed with your rationale for relief.

First, the Board found that the preponderance of the evidence does not support a finding that you were unfit for continued naval service at the time of your discharge. In order to find a Service member unfit for continued naval service, the Service member must be unable to perform the duties of their office, grade, rank, or rating.

In your case, the Board reviewed your fitness reports for the last two years leading up to your discharge but found no evidence that indicates you were unable to perform your military duties. Specifically, the Board noted that, on your discharge fitness report, you were ranked as a highly qualified Marine and received positive performance comments. In addition, you scored a first-class combat fitness test while earning a recommendation for promotion and retention. Based on your performance, you received a reenlist code from the Marine Corps that allowed you to reenlist. In the Board's opinion, this was strong evidence that you were fit for continued naval service at the time of your discharge despite the existence of any disability conditions.

Second, the Board did not find your assertion of a 100% disability rating from the VA persuasive. The mere presence of a medical condition or specific correspondence of any manifestations thereof to an entry indicating a disability rating contained in the VA Schedule for Rating Disabilities is insufficient to warrant either a finding of unfitness for continued naval service or a specific disability rating by the Physical Evaluation Board in the absence of demonstrated duty performance impairment of sufficient magnitude as to render a Service member unfit for continued naval service. By contrast, 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. Due to these reasons, the Board determined that your VA rating was insufficient to overcome the documented evidence of strong performance that existed at the time of your discharge. While the Board empathizes with your current medical condition, it concluded that compensation and treatment for your disability conditions fall outside the scope of the Department of Defense disability system and are, instead, under the purview of the VA.

In your current petition, you again seek a service disability retirement. You argued in support that, prior to your separation, you met with a medical officer who told you that you should not "waste your time or ours trying to get medical retirement," and that a medical board review would keep you enlisted on extension for close to a year. You also argued that a medical officer told you that you should get out and file a VA claim to see what rating your conditions might receive, and that your First Sergeant gave you bad advice. You provided a written statement as well as a written statement from your wife in support, along with documentation from the VA relating to your 100% disability finding.

In your petition, you did not indicate that it was a request for reconsideration of the petition described above, but as noted above, this Board denied your prior petition in 2020. As such, the Board considered your petition as a request for reconsideration, and evaluated it on the basis of new matter that you provided. In addition, the Board reviewed your request in light of the Kurta Memo.

The Board reviewed your request for reconsideration and the new 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 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. In reaching its decision, the Board observed that your assertion that you should have received a medical retirement would have required that you be processed through the Disability Evaluation System (DES) while you were on active duty. In its letter to you of 27 March 2020, the Board explained the standard that applies to be placed into the DES. To reiterate, in order to qualify for military disability benefits through the DES 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.

The Board concluded the preponderance of the evidence does not support a finding that you met the criteria for unfitness as defined within the DES at the time of your separation. At the outset, the Board determined that the new matter that you provided in your current petition was insufficient to change its prior findings, and it concurred with its prior finding in your petition. In its comprehensive review of the entirety of your request for reconsideration, the Board determined that, even assuming that your mental health conditions arose during your service, they did not amount to unfitting conditions within the meaning of the DES. In reaching its findings, the Board observed that, even assuming, *arguendo*, you were diagnosed with mental health conditions such as PTSD while you were on active duty, there is no evidence that any medical provider considered your conditions to warrant referral to a medical board for a determination of fitness for duty within the DES. Service members routinely serve in the naval services with PTSD diagnoses, and such a diagnosis is not necessarily an unfitting condition. In addition, there is no indication that your unit found you to be unfit to perform your duties. To the contrary, as the Board explained in its prior review of your petition, you receive positive fitness reports throughout your service. Further, upon your release from active duty, you were assigned an RE-1A reentry code, which meant that you were qualified to reenlist, and is evidence that you were not considered unfit to continue service in the Marine Corps.

In addition, the Board reiterated that the VA 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. 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,

11/17/2023

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Executive Director

Signed by: █