



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

█
Docket No. 9839-23
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 4 January 2024. 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 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 in the United States Marine Corps (USMC) on 7 January 2008. You deployed in support of Operation Enduring Freedom (OEF) from 13 April 2011 until 27 October 2011. On 30 November 2013, you were discharged as a corporal (E-4), with a re-entry code of RE-1A, and a narrative reason for separation of Completion of Required Active Service.

Service records showed you joined a Selected Marine Corps Reserve (SMCR) unit on 22 February 2016 and actively participated in the United States Marine Corps Reserve (USMCR) until 19 September 2019, obtaining a rank of staff sergeant (E-6). On 25 January 2021, you were discharged from the USMCR with a total of 10 years of service.

For this petition, you contend that you incurred several conditions on active duty to include Post-Traumatic Stress Disorder (PTSD) and Traumatic Brain Injury (TBI), which should have been evaluated prior to your separation. You argue that had these conditions been properly evaluated you would have received a disability discharge. To support your contention you included medical records from the Department of Veterans Affairs (VA) and a VA benefits letter indicating a 100% rating as of 3 September 2021. On 20 November 2023, the Board sent you notification that you did not include materials or documentation to support your claim of TBI and that your case will be administratively placed on hold for thirty days to allow you to submit any documentation. The Board did not receive any information and proceeded with the case.

The Board carefully reviewed 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.

Regarding your request for a disability retirement, the Board noted in order to qualify for a disability retirement there would have to be evidence of unfitness, records to show you were unable to perform the duties of your office, grade, rank or rating as a result of a qualifying disability condition. The Board found there was insufficient evidence that you were suffering from an unfitting condition prior to your release from active duty on 30 November 2013. Your record shows you had meritorious service up until separation and received a reentry code of RE-1A, documenting that you were recommended and eligible for re-enlistment. Moreover, there is no documentation that you were diagnosed or treated for TBI or a mental health condition while in-service. The Board further noted after discharge you served in the Reserves for three years and promoted twice in that time. There is no documentation, no line of duty determination, showing that you were unable to continue in the USMCR due to a medical condition.

Finally, the Board noted your argument for a medical discharge is based on the VA decision to issue you service connected disability ratings. The VA issues disability ratings without regard to fitness for continued naval service; a finding that is required under Navy disability regulations in order to qualify for a disability rating from the Marine Corps. 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 concluded the preponderance of the evidence does not support a finding that you were unfit for continued naval service at the time of your separation and that your request for medical disability retirement is not warranted.

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,

1/30/2024

