



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

█  
Docket No. 10163-23  
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 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 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 Kurta Memo

A review of your record shows that you enlisted in the Navy Reserve on 12 September 1997. During your service in the Navy Reserve, you served a period of active duty that included service in █, from 4 February 2003 through 31 December 2003. According to your petition, you experienced traumatic events while you were in █, such as seeing enemy wounded or killed. In your petition, you also asserted that in 2004 the U.S. Department of Veterans' Affairs (VA) awarded you a 30% disability for right shoulder, back, and dermatitis conditions. Notably, the 2004 finding by the VA did not include a rating for post-traumatic stress disorder PTSD).

In January 2005, you were reviewed by a medical board due to shoulder impingement status post repair. You were placed into the Disability Evaluation System (DES). On 18 March 2005, in connection with your forthcoming Physical Evaluation Board (PEB), your commanding officer prepared a non-medical assessment as follows:

[Petitioner] is an extremely capable petty officer. He is knowledgeable, articulate, and committed to getting the job done correctly. I was surprised to learn of his serious medical conditions, even though [he] has not been able to operate equipment, his ability to stay productive as an instructor and to perform professionally in this unit is a testament of his team attitude and flexibility.

\* \* \*

[Petitioner] is an excellent asset to this unit and the U.S. Navy, and I recommend that you to allow him the opportunity to continue his service.

Notably, your commanding officer did not mention in his NMA that you were unable to perform your duties as a result of any mental health condition, including PTSD. On 13 February 2006, President, PEB, issued its notification of decision that you were separated with severance pay with a 10% disability rating. You indicated in your petition that, post-service, on 12 February 2008, the U.S. Department of Veterans' Affairs (VA) awarded you a 30% rating for PTSD on 12 February 2008, which increased in the years thereafter.

In your petition, you request that you be reviewed by either a medical evaluation board or the PEB to review your health condition at the time of your discharge from the Navy in 2006, which you believe should be at least a 30% rating. In addition, you also request to be awarded two Purple Heart Medals (PHM). In support of your request, you contend that you should have been evaluated for PTSD when you were on active duty in 2003. You assert that the PEB erred when it did not consider your PTSD condition in 2006. You also state that you should have been awarded two PHMs, though your petition does not appear to contain a fulsome explanation of that request.

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 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, (DES) 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 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 DES at any time in during your Navy Reserve service. At the outset, the Board determined as an initial matter 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 despite your assertions that you received medical treatment while you served on a period of active duty, 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 the active duty period in question. In fact, prior to your release from active duty, 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, and there is no indication that you were found to be unfit for discharge. To the contrary, you served until the end of your enlistment and ultimately received a favorable reentry code. 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 the PEB erred in its finding that you were unfit at 10% and should be discharged with severance pay. On this point, the Board concluded that there was insufficient support for your contention that the PEB erred and that you should have been medically retired with a finding of at least a 30% disability rating. In reaching its decision, the Board observed that you provided insufficient evidence that the PEB erred in its finding. The Board further observed that there is no indication in your record, and you provided none, that a medical evaluation board determined that your PTSD condition was a potentially unfitting condition. Similarly, there is no indication from your chain of command that you were unfit due to such condition. To the contrary, the NMA that you commanding officer provided while you were in service does not indicate any concerns relating to a mental health condition, nor did he mention PTSD.

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 diagnose 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 the finding by the PEB that you were unfit with a 10% disability rating. 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. With respect to VA findings, the Board found it

insightful that the VA awarded you service connection for several disabilities in 2004, yet it did not award you a service connected disability in 2004 for PTSD, which was close in time to your deployment to Iraq. Thus, 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 disability rating as adjudicated by the PEB.

With respect to your request for the award of two PHMs, the Board determined that you did not exhaust your administrative remedies by first seeking an award of such medals from the Navy Department Board of Decorations and Medals (NDBDM). You may contact the NDBDM at the following address:

Council of Review Boards  
Navy Department Board of Decorations and Medals (NDBDM)  
1000 Navy Pentagon  
Washington, DC 20350-1000

Accordingly, given the totality of the circumstances and in accordance with the foregoing, the Board determined that the requests contained in your petition do 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,

2/5/2024

