



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. 10505-23
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 8 February 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 completed officer candidate school and accepted a commission into the United States Marine Corps Reserve on 3 April 1998. You served on active duty as a ground supply officer from 3 April 1998 until 31 December 2004, when you were released from active duty with an Honorable characterization of service. You mobilized on 17 May 2008, promoted to Major on 1 July 2008, and deployed to █ in support of Operation █ from 5 September 2008 to 20 March 2009. You were released from active duty on 27 March 2009 with an Honorable characterization of service. You subsequently submitted a request to resign from the Marine Corps Reserve, which was accepted effective 1 November 2009.

For your petition you contend you started to suffer from the early stages of schizoaffective disorder during your last mobilization. Specifically, you had suicidal ideations while deployed, which led to you being medically evacuated to [REDACTED] and eventually transferred to [REDACTED] Hospital. You argue that you were not properly medically screened upon completion of your deployment in 2008 and you incurred schizoaffective disorder on active duty, which should have been evaluated prior to your separation. You claim that had your condition been properly evaluated you would have been referred to the Disability Evaluation System (DES) for medical evaluation for an unfitting condition. You request either referral to the DES or a retroactive medical retirement, due to schizoaffective disorder. You submitted Department of Veterans Affairs (VA) documents, a letter from your treating VA psychiatrist, and letters from Marines you served with to support your claim.

The Board carefully reviewed your petition and the material 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, to include whether they qualified you for the military disability benefits you seek.

In reaching its decision, the Board observed that in order to qualify for military disability retirement, a medical provider refers a service member to the disability evaluation system (DES) if they believe the member has a condition that prevents them from continued service. In this process, the service member has to be found unfit; meaning there must be evidence the service member is unable to perform the duties of their office, grade, rank or rating as a result of a qualifying disability condition. In reviewing your record, the Board noted you did not provide any documentation of being medically evacuated from the 2008 deployment or treatment at Bethesda Naval Hospital. The Board concluded the evidence does not support a finding that, when you were released from active duty, you were unable to perform the duties of your office, grade, or rank.

Finally, the Board noted your argument for a medical retirement is based on the VA decision to issue you service connected disability ratings. The Board was not persuaded by your VA evidence since 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. The Board noted you did not provide any in-service medical records documenting in-service treatment for a mental health condition and the letter from your psychiatrist indicated your mental health treatment started in 2016, seven years following your resignation from the Marine Corps Reserve.

In light of the foregoing standard applicable to the DES, the Board did not discern any facts that would support you being eligible for a disability retirement. Rather, the evidence of record demonstrates that you were discharged after successfully completing your active duty obligation. 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,

3/20/2024

