



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

█
Docket No. 1226-23
Ref: Signature Date



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.

A three-member panel of the Board, sitting in executive session, considered your application on 25 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, and applicable statutes, regulations, and policies. As well as the 14 September 2023 advisory opinion (AO) furnished by the Navy Office of Legal Counsel (BUPERS-00J), 21 September 2023 AO furnished by a Licensed Clinical Psychologist, and your response to the AOs.

Regarding your request for a personal appearance, the Board determined that a personal appearance with or without counsel will 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.

The Board carefully considered your request to revoke your administrative separation (ADSEP), reinstate you to active duty, and to correct your DD Form 214, Certificate of Release or Discharge from Active Duty. You assert that Post Traumatic Stress Disorder (PTSD) led you to being involved in an altercation with another individual at your home, which resulted in assault charges. You claim that the charges were ultimately dismissed after you successfully completed the █ Veterans Treatment Court program. You also claim that your ADSEP board unanimously found there was no basis for Commission of a Serious Offense and recommended that you be retained in the Navy. The Board considered your contention that your separation in the Best

Interests of the Service (BIOTS) was in violation of MILPERSMAN 1910-402 (Administrative Board and Notification Procedures) and 1910-164 (Separation by Reason of BIOTS).

MILPERSMAN 1910-402 requires the Navy to inform the service member of “the basis of the proposed separation, including the circumstances upon which the action is based, and a reference to the applicable provisions of the MILPERSMAN”. In addition, MILPERSMAN 1910-164 increases this notice requirement such that the notice must clearly explain the specific circumstances, acts, or omissions alleged; and why separation is in the best interest of naval service. You argue that your ADSEP was unjust and inequitable because:

- (1) Each notice of ADSEP provided to you was factually insufficient in detail. The notices did not describe in any detail why a past-dismissed civilian verdict was sufficient grounds to find that it was in the best interest of the Navy to discharge you. Assuming your separation was based on the prior verdict, the misconduct was from a prior enlistment.
- (2) The decision to separate you was contrary to the unanimous recommendation of the ADSEP board and your original chain of command.
- (3) The "conviction" that appears to be the reason for separation was never a conviction, the Judge never entered a judgment, the civilian charges against you during a prior enlistment were dismissed, and the arrest records were sealed.

You further contend that your DD Form 214 is missing several important components and decorations.

The Board, however, substantially concurred with the AOs that your BOITS separation was processed in accordance with MILPERSMAN 1910-164 and there is insufficient evidence to attribute your misconduct to symptoms of PTSD. In this regard, the Board noted on 6 February 2017, you returned to the home you shared with your female roommate, when you discovered an unknown male hiding. You proceeded to beat him with a clothes iron on his head, attacked him with a knife, and beat him with your fists. You were subsequently arrested and found guilty of assault with a deadly weapon, great bodily harm, and serious felony: dangerous weapon by a jury. In correspondence to the court, a █, █ Psychiatrist provided a synopsis of your care for PTSD that began during September 2017. The Judge referred (diverted) you to the Veterans Treatment Court program. As a condition of your referral to Veterans Treatment Court program, you were required you to successfully complete the treatment program before applying to dismiss your charges and to have your arrest records sealed. The Board also noted that you were issued an Administrative Remarks (page 13) documenting the guilty finding by the jury, your sentence to three years formal probation, and order to pay various fines.

The Board noted that your ADSEP board unanimously found that the preponderance of evidence supported the basis for a civilian conviction in accordance with MILPERSMAN 1910-144 (Separation by Reason of Misconduct – Civilian Conviction). However, the ADSEP board majority found that the preponderance of evidence did not support the basis for commission of a serious offense, assault with a deadly weapon, and recommended your retention in the Navy. You claimed that the ADSEP board unanimously found no basis for Commission of a Serious Offense. In

reviewing the evidence, the Board determined that your claim is inaccurate since the ADSEP board's finding was by majority vote and not unanimous. The ADSEP board did unanimously find a basis for your civil conviction. It was your conviction in civil court that formed the basis for your separation in accordance with MILPERSMAN 1910-144.

According to MILPERSMAN 1910-144, "Members may be separated based on civilian convictions or actions tantamount to: (1) Findings of guilt, (2) Adjudication withheld, (3) Deferred prosecution, (4) Entry into an adult/juvenile pretrial intervention program, or (5) Any similar disposition of charges, which includes: (a) Imposition of fines, probation, or community service. All civilian convictions (Federal, State, and local), including any actions tantamount to findings of guilt are binding on the issue of whether misconduct has occurred, and an administrative discharge board is required to find that misconduct did occur." It is indisputable that a jury found you guilty of assault with a deadly weapon, great bodily harm, and serious felony: dangerous weapon. You were sentenced to probation and fines were imposed. The Board determined that the jury's verdict, the severity of your misconduct, and diversion to the Veterans Treatment Courts program were tantamount to a finding of guilt and civil conviction warranting your BIOTS separation. In consideration of your argument that there is no conviction, the Board also determined that your conviction was not required to process you for separation pursuant to MILPERSMAN 1910-144.

Concerning your contention that the separation notices did not comply with the applicable MILPERSMAN, the Board substantially concurred with the AO that any flaws in previous notifications were corrected through supplemental notifications and information to you. In this regard, the Board noted the 25 May 2021, Commander, █, notification of ADSEP proceedings by reason of (BIOTS) based upon your civilian conviction. In accordance with MILPERSMAN 1910-402, the notification included the basis for separation as your civilian conviction by the █, █. The circumstances upon which the action is based was due to a review of the applicable MILPERSMAN Articles, and PERS-832 recommendation that MILPERSMAN 1910-164 was the appropriate basis for separation as your case did not meet any other separation criteria and it was the most appropriate reason for separation processing. Based on the foregoing, the Board determined that any previous notification errors were harmless and the notice by the CDR, MNF corrected any previous deficiencies. The Board found no evidence that any flaws in the notification process affected your due process rights or substantially influenced the decision of the Assistant Secretary of the Navy, Manpower & Reserve Affairs (ASN M&RA) to separate you.

Concerning the ADSEP board and your command's recommendation for retention, the Board determined that as the separation authority, ASN M&RA was not bound by the ADSEP board or command recommendations. In this regard, military secretaries are authorized to separate any enlisted Service member prior to expiration of term of service after determining it to be in the best interest of the Service. MILPERSMAN 1910-164 provides that the Secretary of the Navy (SECNAV) has plenary authority to direct the BIOTS separation of any enlisted member prior to the member's expiration of active service. The Board found no evidence that SECNAV's authority is limited to the term of enlistment in which the misconduct occurred. The Board determined that under the delegated authority of SECNAV, the ASN M&RA, properly exercised plenary authority by directing your BIOTS separation.

Concerning the contention that your PTSD diagnosis led you to being involved in the altercation, the Board substantially concurred with the Licensed Clinical Psychologist's opinion that there is insufficient evidence to attribute your misconduct to symptoms of PTSD. In this regard, the Board noted that while there is evidence that you were diagnosed with PTSD, the evidence indicates that your symptoms were appropriately treated and resolved. The Board found no evidence that PTSD or any other mental health diagnoses interfered with your military performance or resulted in acts of violence. The Board also noted that a separate Licensed Clinical Psychologist for the Navy determined that your PTSD was not a contributing factor to your misconduct. The Board acknowledged that your symptoms may have returned after the altercation due to various stressors; however, the Board determined that there is insufficient evidence that your PTSD led to you to being involved in the altercation. The Board thus concluded that there is no probable material error, substantive inaccuracy, or injustice warranting removing your administrative separation or reinstating you to active duty.

Concerning your request for administrative corrections to your DD Form 214, the Board determined that you have not exhausted your administrative remedies. You must contact the Navy Personnel Command to address any errors and to request a corrected DD Form 214 or DD Form 215. 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,

2/26/2024

