



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. 1684-23
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.

A three-member panel of the Board, sitting in executive session, considered your application on 2 May 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, to include the Kurta Memo. In addition, the Board considered the 20 March 2024 Advisory Opinion (AO) from a qualified medical professional and your rebuttal to the AO.

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 enlisted in the Marine Corps and commenced active duty on 7 September 2005. You deployed in support of █ (█) from 12 February 2009 to 1 September 2009. You underwent a second deployment in support of █ from 18 February 2010 to 13 September 2010. In November 2019, while assisting a Marine with reseating targets at the range, you tore your left distal biceps tendon. You underwent surgery on 20 November 2019 and started physical therapy. On 6 January 2020, you were admitted to the outpatient Substance Abuse Rehabilitation Program (SARP) and you were diagnosed with severe alcohol use disorder. For your fitness report ending on 1 June 2020 you were assessed as a "Qualified Marine" and recommended for retention and promotion due to your technical expertise in your military occupational specialty (MOS). In July 2020, you were referred to the Disability Evaluation System (DES) for diagnosis of spontaneous rupture of left upper arm tendons. On 24 February 2021, as part of your non-medical assessment, your commanding

officer (CO) stated the left upper arm injury was in the line of duty, not combat related and not combat zone. He stated the injury had affected your dominant hand rendering you unable to perform the requirements of your rank and specialty.

On 27 April 2021, the Department of Veterans Affairs (VA) released their ratings for your service-connected conditions. Subsequently, on 6 May 2021, the Informal PEB found you unfit for continued military service and recommended separation from active duty with severance pay at a combined 20% rating for Status Post Distal Biceps Tear with Surgical Repair and Left Elbow Strain, Limitation of Flexion, Non-Dominant at 20% disability rating and 2) Status Post Distal Biceps Tear with Surgical Repair and Left Elbow Strain, Limitation of Extension, Non-Dominant at 0% disability rating. On 11 May 2021, you accepted the IPEB finding of Unfit at 20%, did not request a formal PEB hearing, and did not submit new and/or additional information for a VA rating reconsideration for your unfitting conditions.

On 30 June 2021, you underwent non-judicial punishment for three violations of Article 89 (Disrespect toward a Superior Officer) of the UCMJ. You received 45 days of extra duty. Your CO notified you of his intent to recommend administrative discharge by reason of pattern of misconduct; however, your CO did not continue with processing and you were discharged on 15 August 2021 for Disability, Severance Pay, Not Combat Related with an Honorable characterization of service. Your Certificate of Release or Discharge from Active Duty (DD Form 214) states Disability, Severance Pay, non-combat, as the narrative reason for separation.

For this petition, you request to be medically retired due to post-traumatic stress disorder (PTSD). You contend that as a result of experiencing multiple traumatic events on deployment you began to experience unprovoked anger, depression, insomnia, and discontentment. You further contend you abused alcohol as a coping mechanism and should have been referred to the DES for your mental health as well. You included a rating decision from the VA, and a letter from your mental health provider to support your contentions.

Based on your assertions that you incurred a mental health concern (MHC) during your military service, a qualified mental health professional reviewed your request for correction to your record and provided the Board with an AO. The AO stated in pertinent part:

After review of all available objective clinical and non-clinical evidence, in my medical opinion, at the time of discharge from military service, Petitioner's mental health condition did not prevent him from performing the duties of his office, grade, rank, MOS, or rating. His mental health status did not represent an obvious medical risk to the health of the member or to the health or safety of other members, nor did his mental health status impose unreasonable requirements on the military to maintain or protect the Service member.

The AO concluded, "in my medical opinion, the preponderance of objective clinical evidence provides insufficient support for Petitioner's contention that at the time of his discharge he was unfit for continued military service due to PTSD and should have been medically retired."

You submitted a response to the AO stating your PEB was not conducted in accordance with Secretary of the Navy Instruction 1850.4E as your mental health condition was not properly considered for a fitness determination. In addition, you contend that you denied any symptoms of PTSD because you were concerned of the impact it would have on your divorce and career. However, you argue the symptoms clearly manifested in your personal and professional lives resulting in problems maintaining effective work and social relationships.

After reviewing your rebuttal evidence, the AO remained unchanged.

In keeping with the letter and spirit of the Kurta Memo, the Board gave liberal and special consideration to your record of service, carefully reviewed your petition and the material that you provided, and disagreed with your rationale for relief. First, the Board found no evidence that your medical providers considered your mental health condition as unfitting. The Board noted, after extensive medical evaluations, only your bicep condition was referred to a medical board. Secondly, the Board observed you had a Physical Evaluation Board Liaison Officer and you were counseled regarding your Informal PEB findings. Additionally, you signed documentation stating you were aware that you had the right to request additional conditions to be found unfit from the PEB and you had the right to request a higher rating for your left upper arm with the VA prior to your discharge. The Board determined you voluntarily waived the right to submit that information, accepted your findings, and received severance pay. Finally, the Board was not persuaded by the 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. Consequently, the Board concurred with the AO that the preponderance of objective clinical evidence provides insufficient support for your contention that, at the time of your discharge, you were unfit for continued military service due to PTSD. Therefore, in its review and liberal consideration of all the evidence, the Board determined there was no error or injustice with the PEB findings in your case. 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,

5/22/2024

