



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. 6087-23
Ref: Signature Date

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Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to Title 10, United States Code, Section 1552. 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 5 February 2023. 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 the 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 3 September 2014 guidance from the Secretary of Defense regarding discharge upgrade requests by Veterans claiming post-traumatic stress disorder (PTSD)/mental health condition (MHC) (Hagel Memo), and the 25 July 2018 guidance from the Under Secretary of Defense for Personnel and Readiness regarding equity, injustice, or clemency determinations (Wilkie Memo). The Board also considered the advisory opinion (AO) furnished by a qualified mental health professional, dated 22 December 2023. Although you were afforded an opportunity to submit an AO rebuttal, you chose not to do so.

You enlisted in the Navy and began a period of active duty on 17 January 1990. Upon your enlistment, you denied any history of treatment for a mental health condition. On 29 January 1990, your commanding officer referred you to the █ as a result of suicidal ideations, depression, and lack of motivation complaints. Subsequently, you were diagnosed by a medical officer with Borderline Personality Disorder, Severe, #301.83, EPTE. On 1 February

1990, you were notified of the initiation of administrative separation proceedings by reason of your Borderline Personality Disorder, at which point you decided to waive your procedural rights. On 8 February 1990, you were evaluated by a medical officer as a result of complaints of crying every night and difficulty in self-control. Subsequently, the medical officer concurred with your previous Borderline Personality Disorder, Severe, #301.83 diagnosis and recommended an expeditiously discharge from service. On the same date, your commanding officer recommended an uncharacterized Entry Level Separation (ELS) characterization of service by reason of Borderline Personality Disorder, Severe. On 14 February 1990, you were so discharged.

The Board carefully considered all potentially mitigating factors to determine whether the interests of justice warrant relief in your case in accordance with the Kurta, Hagel, and Wilkie Memos. These included, but were not limited to your desire for a discharge upgrade and contentions that: (a) your military record does not reflect your discharge due to a traumatic brain injury which took place during swimming drills while in boot camp, (b) you were denied medical attention at the time the injury occurred, and (c) you are in need of benefits that were denied to you as a result of the discrepancies created by your discharge characterization. For purposes of clemency and equity consideration, the Board noted you did provide a copy of your Department of Veterans Affairs treatment record for skin ulcers.

As part of the Board's review, the Board considered the AO. The AO stated in pertinent part:

During military service, the Petitioner was appropriately referred and properly evaluated. His personality disorder diagnosis was based on observed behaviors and performance during his period of service, the information he chose to disclose, and the psychological evaluations performed by the mental health clinicians. A personality disorder diagnosis is pre-existing to military service, and indicates lifelong characterological traits unsuitable for military service, since they are not typically amenable to treatment within the operational requirements of Naval Service. There is no evidence of TBI in the record and the Petitioner has provided no medical evidence to support his claims. Additional records (e.g., post service mental health records describing the Petitioner's diagnosis, symptoms, and their specific link to his misconduct) may aid in rendering an alternate opinion.

The AO concluded, "it is my clinical opinion there is insufficient evidence of a diagnosis of PTSD, TBI, or another mental health condition that may be attributed to military service."

After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board noted you were appropriately assigned an uncharacterized Entry Level Separation based on your time on active duty. Applicable regulations authorize an Entry Level Separation if the processing of an individual's separation begins within 180 days of entry into active service. While there are exceptions to this policy in cases involving misconduct or extraordinary performance, the Board concluded neither exception applied in your case. Further, the Board noted you were appropriately processed and discharged based on your failure to meet induction standards due to your preexisting Borderline Personality Disorder. Further, the Board concurred with the AO that there is insufficient evidence of a

diagnosis of PTSD, TBI, or another mental health condition that may be attributed to your military service. Finally, absent a material error or injustice, the Board declined to summarily upgrade a discharge solely for the purpose of facilitating veterans' benefits or enhancing educational or employment opportunities. In reviewing the record, the Board found no evidence to substantiate your contention that there were discrepancies with your discharge characterization. Therefore, even in light of the Wilkie Memo and reviewing the record holistically, the Board did not find evidence of an error or injustice that warrants granting you the relief you requested or granting relief as a matter of clemency or equity. 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 the 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

