



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. 6440-23

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 limitations 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 18 March 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 service record, and 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 an advisory opinion (AO) from a qualified mental health professional. Although you were provided an opportunity to respond to the AO, you chose not to do so.

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.

You enlisted in the United States Navy and commenced a period of service on 17 June 1999. On 17 August 1999, you were evaluated by a military medical treatment provider and diagnosed with "syncope" (fainting). Your medical record reveals that you experienced four syncope

episodes while in basic training, and a medical cause for these episodes could not be identified. It was determined that your condition was not correctable.

On 20 August 1999, you were notified that you were being processed for Uncharacterized Entry Level Separation (ELS) at the “Convenience of the Government due to physical or mental conditions as evidenced by fainting.” You waived your right to consult with qualified counsel and your right to submit a statement in rebuttal. On 1 September 1999, you were discharged from the Navy with an uncharacterized ELS due to failure to meet medical/physical requirement standards and assigned an RE- 4 reentry code.

The Board carefully considered all potentially mitigating and/or extenuating 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: (a) your desire for a characterized (Honorable) period of service, (b) your assertion that you were struggling with undiagnosed mental health concerns during your service, and (c) the impact that your mental health had on your overall health, to include your diagnosis of “syncope.” For purposes of clemency and equity consideration, the Board considered the evidence you submitted in support of your application.

In your request for relief, you contend that you incurred mental health concerns during military service, which mitigate the circumstances of your discharge. You explain that the syncope episodes have caused you stress over time, resulting in you 2022 diagnosis of anxiety and panic attacks. As part of the Board review process, the BCNR Physician Advisor who is a licensed clinical psychologist (Ph.D.), reviewed your contentions and the available records and issued an AO dated 5 February 2024. The Ph.D. noted in pertinent part:

The Petitioner submitted medical records from █ Psychiatry where he was seen periodically between March and June 2022. He was diagnosed with Anxiety and Panic Attacks. The records do not indicate the etiology or starting point of his diagnoses. There is no evidence that the Petitioner was diagnosed with a mental health condition while in military service, or that he exhibited any psychological symptoms or behavioral changes indicative of a diagnosable mental health condition. He submitted evidence of post-service diagnoses of Anxiety and panic attacks that are temporally remote to service. His personal statement is not sufficiently detailed to establish clinical symptoms or provide a nexus with his misconduct. Additional records (e.g., post-service mental health records describing the Petitioner’s diagnosis, symptoms, and their specific link to his misconduct) would aid in rendering an alternate opinion.

The Ph.D. concluded, “it is my considered clinical opinion there is insufficient evidence of a mental health condition that may be attributed to military service. There is insufficient evidence that his uncharacterized separation could be attributed to a mental health condition.”

After thorough review, the Board concluded the potentially mitigating factors were insufficient to warrant relief. In accordance with the Kurta, Hagel, and Wilkie Memos, the Board gave liberal and special consideration to your record of service and your contentions about

undiagnosed mental health issues and your resulting condition. In making this finding, the Board concurred with the medical service providers that your “syncope” was a condition, not considered a physical disability, which interfered with the performance of your duty. The Board also concurred with the AO that there was no convincing evidence that you suffered from any type of mental health condition while on active duty, or that any such mental health condition was related to or mitigated the basis of your discharge. The Board concurred with the AO that your post-service diagnoses of anxiety and panic attacks that are temporally remote to service, appear unrelated, and fail to provide a nexus to the basis that formed your discharge.

The Board also highlighted that when a separation is initiated while a member is in entry level status (within the first 180 days of enlistment), it will be described as entry level separation except in rare circumstances. After thorough review of your service record, the Board did not identify unusual circumstances involving personal conduct and performance of military duty that would support an Honorable characterization of service. As a result, the Board determined that there was no impropriety or inequity in your discharge, and even under the liberal consideration standard, the Board concluded that your Uncharacterized ELS and narrative reason for separation are accurate and should remain unchanged. While the Board carefully considered the evidence you submitted in mitigation, even in light of the Kurta, Hagel, and Wilkie Memos and reviewing the record liberally and 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 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,

3/29/2024

