



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

██████████
Docket No. 10384-23
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 10 July 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 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). In addition, the Board 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 U.S. Marine Corps and began a period of active duty on 17 June 1980. On 28 June 1980, during basic training, you were admitted to the naval hospital for right temporal

headaches. You were discharged from the hospital, on 2 July 1980, and was diagnosed with vascular headache secondary to right temporal vascular anomaly. A medical board noted your condition existed prior to your entry into the Marine Corps and you were asymptomatic upon your release from the hospital. Thus, you were determined to have been enlisted in error based on your condition and recommended separation. On 29 August 1980, you were informed of the medical board results and elected to be discharged for erroneous enlistment for failing to meet physical standards. Ultimately, you were so discharged on 5 September 1980 with an Honorable characterization of service.

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 change to your narrative reason for separation and separation code to reflect a disability discharge. You contend that you were kicked in the head while training and suffered swelling in your temple that led to your discharge. For purposes of clemency and equity consideration, the Board noted you provided no supporting evidence other than your application.

As part of the Board review process, the BCNR Physician Advisor reviewed your contentions and the available records and issued an AO dated 7 May 2024. The AO stated in pertinent part:

Petitioner was properly evaluated during an inpatient hospitalization. It was determined that his condition was pre-existing to military service. There is no evidence of an injury incurred by the Petitioner to contribute to his condition in the service medical record. The Petitioner has provided no medical evidence to support his claims. Additional records (e.g., post-service records describing the Petitioner's diagnosis, symptoms, and their specific link to his separation from service) may aid in rendering an alternate opinion.

The AO concluded, "it is my clinical opinion there is insufficient evidence of error in the in-service diagnosis and recommendations."

After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your assigned narrative reason for separation and separation code remain appropriate. The Board concurred with the AO that there is insufficient evidence of error in the in-service diagnosis and recommendations. As explained in the AO, your condition was pre-existing to military service, there is no evidence of an injury incurred by you, and you provided no medical evidence in support of your contention. 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.

As a result, 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,

7/22/2024

