



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. 10674-23
0669-23
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.

Because your application was submitted with new evidence not previously considered, the Board found it in the interest of justice to review your application. Your current request has been carefully examined by a three-member panel of the Board, sitting in executive session on 17 June 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, and applicable statutes, regulations, and policies, to include the 25 August 2017 guidance from the Office of the Under Secretary of Defense for Personnel and Readiness (Kurta Memo), the 3 September 2014 guidance from the Secretary of Defense regarding discharge upgrade requests by Veterans claiming post-traumatic stress disorder (PTSD) (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). Additionally, the Board considered an advisory opinion (AO) from a qualified mental health professional and your response 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 on the evidence of record.

Your previous discharge upgrade request was denied by this Board on 7 August 2023. The facts of your case remain substantially unchanged.

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 to upgrade your discharge to an Honorable characterization and to change your separation reason from “fraudulent enlistment.” You contend that: (1) you incurred PTSD and other mental health concerns during military service, (2) You never sleep walked prior to your entry into the military, (3) you do not have a sleep, mental health and/or other physical, mental emotional, cognitive or social disorders, and (4) for over 27 years you have been a productive citizen in society, and you are an exceptional children’s education educator. For purposes of clemency and equity consideration, the Board noted you provided personal statements, medical documents, a page from handout 5.1 titled “Recovery or Nonrecovery from PTSD Symptoms Following Traumatic Events.” The Board further noted your application lists that you provided a diploma, professional certificates, character references, and a lay statement; however, these items were not submitted with your application.

Based on your assertions that you incurred PTSD and other mental health concerns during military service, a qualified mental health professional provided the Board with the AO. The AO stated in pertinent part:

There is no evidence that the Petitioner was diagnosed with a mental health condition in service. Temporally remote to his military service, a civilian provider has noted symptoms of PTSD that are attributed to military service. Unfortunately, available records are not sufficiently detailed to establish a nexus with the circumstances of his separation from service. There is insufficient evidence of error in the in-service diagnosis of sleepwalking. More weight was placed on the in-service statement of the Petitioner that he disclosed a pre-service history of sleepwalking to his recruiter over the Petitioner’s current statement that he had no pre-service sleep difficulties.

The AO concluded, “it is my clinical opinion there is post-service evidence from a mental health provider of a possible diagnosis of PTSD due to military service. There is insufficient evidence to attribute the circumstances of his separation to PTSD or another mental health condition, other than a diagnosis of sleepwalking, existing prior to entry into service.”

You submitted a rebuttal in response to the AO providing additional clarification of the circumstances of your case. After reviewing your evidence, the original AO remained unchanged.

After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined your narrative reason for separation and uncharacterized entry level separation remains appropriate. In making this finding, the Board concurred with the AO that there is insufficient evidence to attribute the circumstances of your separation to PTSD or another mental health condition, other than a diagnosis of sleepwalking, existing prior to entry into service. The Board agreed with the AO that your in-service statement disclosing a pre-service history of sleepwalking was credible and carried more weight than your

current denial. Further, the Board affirmed its previous finding that your uncharacterized entry level separation is correct based on your discharge within your first 180 days of active duty service. Again, the Board determined no exception to policy exists in your case.

Therefore, 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 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 is attached 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,

7/2/2024

