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

[redacted]
Docket No. 1288-24
Ref: Signature Date

[redacted]

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 27 June 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.

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 24 February 2003. In your petition, you provided documentation that, while in service you received medical care from time to time for a variety of conditions relating to your feet, back, and mental health (anxiety), among others. None of the documentation that you provided indicated that your providers recommended that you be evaluated by a medical evaluation board (MEB) to determine your fitness to continue service. In your petition, you also described that during your service, you twice deployed to [redacted] and you received a Combat Action Ribbon. On 15 June 2006, you received nonjudicial punishment for wrongfully communicating a threat. On

3 August 2006, you received nonjudicial punishment for absenting yourself without authority and for disobeying a lawful order. You reached the end of your active obligated service and you separated from the Marine Corps on 23 February 2007. You were assigned an Honorable characterization of service and an RE-1A reentry code, which meant that you were eligible to reenlist.

In your petition, you requested that you be awarded a retroactive medical discharge or a medical retirement. In support of your request, you contend that you were not given proper medical treatment for your post-traumatic stress disorder (PTSD) or traumatic brain injury (TBI) while in service, that you should have been referred to a MEB, and that you were ill-advised on matters relating to a MEB. You further asserted that, on 24 February 2007, one day after your separation, the Department of Veterans' Affairs awarded you service-connected disability compensation for PTSD (initially 50%, increased to 100% on 31 October 2011), migraines secondary to TBI (30%), sciatic nerve impingement (0% initially, eventually increased to 20%), and other conditions. You argued that, since the end of your service, it has been a daily struggle managing the symptoms of PTSD, TBI, and orthopedic injuries. You provided medical records from your time in service as well as post service VA findings granting you 100% service connected disabilities.

The Board reviewed your petition and the material that you provided in support, and disagreed with your rationale for relief. In keeping with the letter and spirit of the Kurta Memo, the Board gave liberal and special consideration to your record of service, and your contentions about any traumatic or stressful events you experienced, and their possible adverse impact on your service. In reaching its decision, the Board observed that your assertion that you should have received a medical retirement would have required that you be processed through the Disability Evaluation System (DES) while you were on active duty. In order to qualify for military disability benefits through the DES with a finding of unfitness, a service member must be unable to perform the duties of their office, grade, rank or rating as a result of a qualifying disability condition. Alternatively, a member may be found unfit if their disability represents a decided medical risk to the health or the member or to the welfare or safety of other members; the member's disability imposes unreasonable requirements on the military to maintain or protect the member; or the member possesses two or more disability conditions which have an overall effect of causing unfitness even though, standing alone, are not separately unfitting.

The Board concluded the preponderance of the evidence does not support a finding that you met the criteria for unfitness as defined within the DES at the time of your separation. In its comprehensive review of the entirety of your request, the Board determined that there is no evidence that any medical provider considered any of the conditions for which you sought treatment while in service warranted referral to a medical board for a determination of fitness for duty within the DES. Even assuming for the sake of argument that you were diagnosed with PTSD while in service, service members routinely serve in the naval services with PTSD and other mental health diagnoses, and such a diagnosis does not necessarily result in a finding of an unfitting condition. In your case, the Board observed that you served a complete enlistment that you were issued a favorable reentry code. In other words, you were fit for separation from service and, at the time of your separation, you were considered fit to reenlist. This is inconsistent with being unfit within the meaning of the DES.

The Board noted that you rely in large part on post service findings by the VA in support of your petition. The Board did not find this evidence to be persuasive, because the VA does not make findings concerning fitness for duty. To the extent you rely upon findings by the VA to support your request for a disability retirement, the Board reiterated that the VA is a separate organization, and it does not make determinations as to fitness for service as contemplated within the DES. Rather, 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. In sum, in its review and liberal consideration of all the evidence, the Board did not observe any error or injustice in your naval records. 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,

7/11/2024

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