



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

██████████
Docket No. 1323-24
Ref: Signature Date

████████████████████
████████████████████
████████████████████

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 11 September 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.

You enlisted in the U.S. Navy and entered active duty on 1 August 2005. In your report of medical history, dated 29 March 2005, you expressly denied ever having "depression or excessive worry." However, on 18 August 2005 you were seen by psychologist and determine to be a threat for self-harm if retained in the Navy. You were diagnosed of major depressive disorder, single episode, and borderline personality disorder after disclosing that you struggled with recurrent suicidal thoughts over the past year and admitting to cutting your arms in self-mutilation and hitting objects to the point of injury. As a result, the Commanding Officer (CO)

directed that you be discharged with an uncharacterized entry level separation for Defective Enlistment and Inductions, Erroneous Enlistment. You were so discharged on 31 August 2005.

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 contention that the Department of Veterans Affairs (VA) determined your service was Honorable when assigning you a 100% disability rating. For purposes of clemency and equity consideration, the Board noted you provided your VA disability rating.

As part of the Board review process, a licensed clinical psychologist (Ph.D.) reviewed your contentions and the available records, and issued an AO dated 5 July 2024. The Ph.D. stated in pertinent part:

Petitioner was appropriately referred for psychological evaluation properly evaluated during his enlistment. His diagnosis was based on the information he chose to disclose, observed behaviors, and the psychological evaluation performed by the mental health clinician. It is plausible that the Petitioner's post-service mental health diagnosis is related to his in-service symptoms. However, he was separated from service due to erroneous enlistment, because he did not disclose pre-service mental health difficulties during the enlistment process.

The Ph.D. concluded, "it is my clinical opinion there is post-service evidence from the VA of a mental health condition that may be attributed to military service. There is insufficient evidence to attribute the circumstances of his separation to a mental health condition."

After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined your assigned uncharacterized entry level separation remains appropriate. Service regulations direct the assignment of an uncharacterized entry level discharge when a service member is processed for separation within their first 180 days of active service. While there are exceptions in cases involving misconduct or extraordinary performance, the Board determined neither exception applied in your case. Further, the Board concurred with the AO and determined there is insufficient evidence to attribute the circumstances of his separation to a mental health condition. As explained in the AO, you were separated from service due to erroneous enlistment, because you did not disclose pre-service mental health difficulties during the enlistment process. Furthermore, the Board noted that VA eligibility determinations, disability ratings, and/or discharge classifications are not binding on the Department of the Navy and have no bearing on previous active duty service discharge characterizations. As a result, the Board found no error with your record.

Additionally, the Board observed that you were fortunate not to have been processed for fraudulent enlistment based on your failure to truthfully complete your report of medical history during your enlistment processing. Based on your documented history of extensive mental health issues and self-harm, the Board concluded, more likely than not, you would have been deemed ineligible for active duty service due to your preexisting mental health conditions. However, as a result of your entry into the Navy with a preexisting condition and 31 days of active duty service,

the Board noted you have qualified for extensive veterans' benefits. Consequently, when weighing your assigned uncharacterized entry level separation against the lifetime of veterans' benefits you now receive, the Board found no injustice with your record.

Therefore, 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,

9/25/2024

