



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. 3106-24
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.

A three-member panel of the Board, sitting in executive session, considered your application on 1 October 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 applications, together with all material submitted in support thereof, relevant portions of your naval record and applicable statutes, regulations, and policies, as well as the 14 August 2024 Advisory Opinion (AO) provided by a Licensed Clinical Psychologist. Although you were afforded an opportunity to submit a rebuttal 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.

The Board carefully considered your request for review of the Secretary of the Navy's (SECNAV) decision of administrative separation instead of retirement. The Board considered your contentions that after several years of mistreatment and misdiagnosis, you incurred mental health concerns during military service, which might have mitigated your discharge characterization of service. You submitted congressional correspondence, a letter of reference from your wife, and a forensic psychosexual evaluation dated September 2019 in support of your contentions.

The Board noted the record reflects that in July 2019, you were implicated in a sex sting operation with an undercover agent posing as a minor. You were charged with transmission of harmful material to a minor by an electronic device and traveled to meet the victim after using a

computer. In July 2021, you were committed to the custody of the Department of Corrections to be imprisoned for a term of 25.05 months, with 536 days credit for time incarcerated before imposition of the sentence. You also received a separate three-year sex offender probation period consecutive to imprisonment followed by four years regular probation. As a result, you were notified of administrative separation processing for misconduct due to civilian conviction and you elected an Administrative Separation Board (ASB).

On 21 June 2021, an ASB was held with you in absentia due to your civilian confinement. The ASB determined by majority vote that the preponderance of evidence supported the basis for separation. The ASB recommended that you be transferred to the Fleet Reserves with an Other Than Honorable (OTH) characterization of service at the lesser paygrade of E-6. On 19 July 2023, a Psychiatrist with [REDACTED] reviewed your record and noted that you had been diagnosed with Post Traumatic Stress Disorder (PTSD) and were treated from 6 September 2019 until 18 January 2020. However, you were not referred into the Disability Evaluation System (DES). It was the opinion of the reviewing Psychiatrist that your mental health diagnosis did not contribute to the actions for which you were pending administrative separation.

On 19 January 2024, the Chief of Naval Personnel (CNP) recommended that the Assistant Secretary of the Navy, Manpower and Reserve Affairs (ASN, M&RA) disapprove your transfer to the Fleet Reserve and separate you from the naval service with an OTH characterization of service. The CNP noted that although you were diagnosed and treated for PTSD, a military psychiatrist determined your PTSD condition did not contribute to the conduct that formed the basis for administrative separation. On 7 February 2024, the ASN, M&RA disapproved your request to transfer to the Fleet Reserve and directed your administrative separation from naval service with an OTH characterization of service.

Because you contend that your misconduct should be mitigated by your mental health condition, the Board considered the AO. The AO stated in pertinent part:

The Petitioner submitted congressional correspondence, a letter of reference from his wife, and a "Forensic Psychosexual Evaluation" dated September 2019. The psychologist (forensic evaluator) provided a comprehensive and detailed summary of his deployments per Petitioner's anecdote. She also provided a summary of mental health treatment from his active duty service file (Not available for this review). The evaluation also included a number of personality tests and measures, of which most yielded excessively elevated scores outside of the normal population. On the Social Desirability score of the Abel Assessment For Sexual Interest-3, the Petitioner scored a 75%, which is in the "highly problematic" range. His scores on the Minnesota-Multiphasic Personality Inventory, 2nd Ed. (MMPI-2) notes extremely elevated scales in all areas except for Masculinity/Femininity and Mania. As the evaluator did not include validity scales, it is impossible to say whether the scale is invalid or not, but it is highly likely that the Petitioner exaggerated symptoms considering the scores obtained. Similarly, his scores were so elevated on the Personality Assessment Inventory (PAI), that the evaluating psychologist

administered the test a second time. He endorsed extremely high levels of depression and anxiety, which are likely given his circumstances, and/or exaggeration of symptomatology. The evaluator also administered combat stress measures to assess for PTSD. Ultimately, the Petitioner was diagnosed with PTSD and Generalized Anxiety Disorder as a result of the forensic evaluation.

There is second-hand evidence that the Petitioner was diagnosed with a mental health condition (PTSD) while in military service, however these records were not available for review. The nature and severity of his misconduct cannot be explained by PTSD symptoms alone. His misconduct is more likely synonymous with a characterological disorder. Judgment and impulse control can be negatively affected by PTSD, but not typically as severely as evidenced by the Petitioner's misconduct that led to civil arrest and conviction. Additional records (e.g., mental health records describing the Petitioner's diagnosis, symptoms, and their specific link to his misconduct) would aid in rendering an alternate opinion.

The AO concluded, "it is my considered clinical opinion there is sufficient evidence of mental health condition that may be attributed to military service. There is insufficient evidence that his misconduct could be attributed to a mental health condition."

Upon review and consideration of all the evidence of record, the Board found insufficient evidence of an error or injustice warranting relief. The Board substantially concurred with the AO and concluded that there was insufficient evidence your misconduct could be attributed to a mental health condition. As explained in the AO, nature and severity of your misconduct cannot be explained by PTSD symptoms alone and while judgment and impulse control can be negatively affected by PTSD, it is not typically as severely as evidenced by your misconduct. Therefore, the Board determined that the evidence of record did not demonstrate that you were not mentally responsible for your conduct or that you should not be held accountable for your actions. The Board also that noted when the ASN, M&RA considered your request to transfer to the Fleet Reserves, he was aware of the military psychiatrist's opinion that your PTSD did not contribute to the conduct which formed the basis for administrative separation.

Finally, the Board also noted that requests to approve a member's transfer to the Fleet Reserve is at the discretion of the SECNAV. The SECNAV may deny or modify such requests so that the member is transferred in a reduced paygrade based on the member's service, conduct, performance, or for any other reason which is supported by sufficient evidence. The Board concurred with the SECNAV decision in your case based on the seriousness of your misconduct and concluded that correcting your record to reflect transfer to the Fleet Reserves is not warranted. 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,

11/7/2024



Director

Signed by: [Redacted]