



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. 3546-24
Ref: Signature Date

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Dear █

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.

Because your application was submitted with new evidence not previously considered, the Board found it in the interest of justice to review your application. A three-member panel of the Board, sitting in executive session on 1 August 2024, has carefully examined your current request. 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 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 25 August 2017 guidance from the Office of the Under Secretary of Defense for Personnel and Readiness (Kurta Memo) and 4 April 2024 guidance from the Under Secretary of Defense for Personnel and Readiness relating to the consideration of cases involving both liberal consideration discharge relief and fitness determinations (Vazirani Memo) (collectively the "Clarifying Guidance").

You previously applied to this Board for an discharge upgrade and were denied on 10 January 2024. The facts of your case remain substantially unchanged.

In its evaluation of your prior petition, this Board obtained an advisory opinion (AO) from a mental health professional. According to the AO, there was no evidence that you were diagnosed with a mental health condition while you were on active duty, although there was behavioral evidence of a possible alcohol use disorder. The AO also noted that the Department of Veterans' Affairs (VA) granted you service connection for post-traumatic stress disorder (PTSD) post service, which it attributed to combat exposure. The AO noted that your initial nonjudicial punishment, which occurred prior to your deployment, was not consistent with PTSD

symptoms. The AO found that there was insufficient information to attribute your disobedience to PTSD symptoms, but that it was possible that your problematic alcohol use and subsequent misconduct could be attributed to attempts to self-medicate unrecognized symptoms of PTSD.

This Board informed you that it denied your petition, concluding that the potentially mitigating factors that you raised were insufficient to warrant relief. In reaching its decision, the Board explained that it applied liberal and special consideration in accordance with applicable Clarifying Guidance and, despite reviewing your record liberally and holistically, it determined that significant negative aspects of your active-duty service outweighed the positive aspects and continues to warrant a General (Under Honorable Conditions) characterization of service.

In your current petition, you request to have your discharge changed to a medical disability retirement with back pay and any other relief deemed appropriate. In support of your request, you contend that you should have been processed through the disability evaluation system because you had undiagnosed post-traumatic stress disorder when you were on active duty. You provided Department of Veterans Affairs (VA) documentation reflecting that you have been awarded, post service, a 100% service connected disability. You also provided a PTSD Disability Benefits Questionnaire (DBQ) from the VA.

The Board carefully reviewed your petition and the material that you provided in support of your petition, and disagreed with your rationale for relief. In keeping with the letter and spirit of the Clarifying Guidance, 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, in order to qualify for military disability benefits through the Disability Evaluation System (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.

In reviewing your record, the Board concluded the preponderance of the evidence does not support a finding that you met the criteria for unfitness as defined within the disability evaluation system at the time of your discharge. Despite its application of special and liberal consideration, the Board observed no evidence that you had any unfitting condition while on active duty. In its application of the Clarifying Guidance, the Board acknowledged that you had a condition or experience that may excuse or mitigate your discharge, which, at least for the sake of argument, occurred, or was worsened, during your naval service. In accordance with the Vazirani Memo, the Board first applied liberal consideration to your assertion that your PTSD potentially contributed to the circumstances resulting in your discharge to determine whether any discharge relief is appropriate. After making that determination, the Board then separately assessed your claim of medical unfitness for continued service due to PTSD as a discreet issue, without applying liberal consideration to the unfitness claim or carryover of any of the findings made

when applying liberal consideration. Thus, the Board analyzed whether your PTSD condition actually excused or mitigated your discharge. On this point, the Board adopted its rationale from its prior decision and determined that mitigation was not appropriate in your case. The Board further observed that, had you not been separated at the end of your obligated service, you would likely have been processed for administrative separation based on misconduct, in which case you would have been at risk of being assigned an Other Than Honorable characterization of service. In such case, even assuming you had been placed into the DES, based on policy that directs misconduct based processing to take precedence over DES processing, you would have been ineligible for DES consideration.

With respect to its analysis of your request for a service disability retirement, the Board observed there is insufficient evidence that you had an unfitting condition while you were on active duty. On this point the Board found insufficient no evidence in your service records, and you did not provide any, demonstrating that, while you were in service, you had an unfitting condition within the meaning of the DES. In fact, the AO from your prior petition found no evidence that you were diagnosed with a mental health condition while you were on active duty. The Board noted that there is no indication that anyone in your chain of command observed that you were unfit to perform your duties due to any disability conditions. To be eligible for a service disability retirement, a service member must have conditions that have been medically determined to be unfitting at the time of service. In your case, the proximate reason for your discharge was your end of service obligation and not due to any perception that you were unable to perform your duties based on any physical or mental health limitations. In fact, your record demonstrates that, but for those periods in which you engaged in misconduct, you were otherwise an effective Marine and, more likely than not, would have been eligible for reenlistment.

Finally, the Board did not find as persuasive your reliance on post-service findings by the VA granting you service connection for PTSD, the Board observed that the VA does not make determinations as to fitness for service as contemplated within the service disability evaluation system. 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 of the evidence and its careful application of the Clarifying Guidance, 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,

8/22/2024

