



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

Docket No. 5288-24

Ref: Signature Date

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.

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 1 November 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). The Board also considered the advisory opinion (AO) furnished by a qualified mental health professional, dated 13 September 2024. Although you were afforded an opportunity to submit an AO rebuttal, you chose not to do so.

You enlisted in the Marine Corps Reserves and began a period of active duty on 27 May 2003. On 28 June 2003, you were counseled concerning being transferred to MRP due to an unresolved right shoulder sprain. On 9 July 2003, you elected to be discharged from the Marine Corps Reserves in order to meet your convene date for college. On 14 July 2003, you were counseled concerning unsatisfactory performance and or conduct due to not showing the ability to successfully complete recruit training and not being able to adapt to the Marine Corps way of life. On the same date, you were notified of the initiation of administrative separation proceedings by

reason of convenience of the government due to not be able to meet college date, at which point, you decided to waive your procedural rights. Subsequently, your commanding officer recommended an Uncharacterized entry level separation by reason of convenience of the government. On 18 July 2003, you were so discharged.

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 contentions that: (a) you enlisted in the Marine Corps after watching the 9/11 attacks, (b) you were diagnosed with a shoulder impingement, but after several weeks in medical and physical therapy your condition was not improving, (c) you battalion commander told you that a general discharge instead of a medical was the best course in order to maintain a good status in the officer's program, (d) you met with multiple medicine doctors and shoulder specialist but none of them could identified the reason why your shoulder was not healing, (e) you completed one year with the Air Force ROTC but could not pass the medical qualifications, (f) you applied for jobs with the FBI and DEA and were not able to maintain certain upper body standards due to your arm, (g) you were later diagnosed with Thoracic Outlet Syndrome, (h) the damage on your shoulder is now permanent. For purposes of clemency and equity consideration, the Board noted you submitted a personal statement and Department of Veterans Affairs (VA) Rating Decision Document.

As part of the Board's review, the Board considered the AO. The AO stated in pertinent part:

Petitioner submitted VA paperwork noting 70% service-connection for "Generalized Anxiety Disorder with Depressive Features associated with right shoulder thoracic outlet syndrome." There is no evidence that the Petitioner was diagnosed with a mental health condition while in military service, or that he exhibited any symptoms of a mental health condition. His statement is not sufficiently detailed to provide a nexus with his misconduct. 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 post-service mental health condition that is temporally remote to service. There is insufficient evidence that his characterization of service could be attributed to a mental health condition."

After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board noted you were appropriately assigned an uncharacterized entry level separation. Applicable regulations authorize an uncharacterized entry level separation if the processing of an individual's separation begins within 180 days of entry into active service. While there are exception to this policy in cases involving misconduct or extraordinary performance, the Board concluded neither exception applied in your case. Further, the Board noted you were appropriately processed and discharged based on your inability to meet the required college date. Additionally, the Board noted that VA eligibility determinations for health care, disability compensation, and other VA administered benefits are for internal VA purposes only. Such 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. Lastly, the Board concurred with the AO that there is insufficient evidence that you were diagnosed with a mental health condition while in military service. As explained in the AO, there is no evidence that you were diagnosed with a mental health condition while in military service, or that you exhibited any symptoms of a mental health condition.

As a result, 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 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,

11/26/2024

