



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

██████████
Docket No. 7876-24
Ref: Signature Date

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Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to 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 10 February 2025. 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 17 December 2024. Although you were afforded an opportunity to submit an AO rebuttal, you chose not to do so.

Regarding your request for a personal appearance, the Board determined that a personal appearance with or without counsel will not materially add to their understanding of the issue(s) involved. Therefore, the Board determined that a personal appearance was not necessary and considered your case based on the evidence of record.

You enlisted in the Army and began a period of active duty on 10 August 2000. On

14 September 2000, you were discharged with an uncharacterized discharge characterization service by reason of entry level performance and conduct. On 28 September 2001, you enlisted in the Marine Corps with a waiver and began a period of active duty on 24 January 2002. On 30 January 2002, you were counseled concerning unsatisfactory performance and conduct due to not showing the ability to successfully complete recruit training, not putting forth reasonable effort at all times in recruit training, not adapting to the Marine Corps way of life, showing an apathetic attitude towards training, showing lack of maturity, lack of self-discipline, showing inability follow instructions, and disrespectful attitude. Consequently, you were advised that failure to correct such deficiencies may result in being placed on trial training.

On 5 February 2002, you were notified of the initiation of administrative separation proceedings by reason entry level performance and conduct based on your lack of reasonable effort. You waived your procedural rights, and your commanding officer recommended an uncharacterized Entry Level Separation (ELS) separation. On the same date, the separation authority approved the recommendation, and you were so discharged on 15 February 2002.

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 were not thoroughly evaluated before your discharge, which caused you to not being able to obtain civilian employment, (b) you solely depend on your family support for assistance, which has caused a diagnosis of PTSD, (c) you are currently receiving Social Security benefits. For purposes of clemency and equity consideration, the Board noted you provided copies of your Social Security Administration Request for Information Letter / Entitlements, a letter from your case manager, and a character letter of support.

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

There is no evidence that he was diagnosed with a mental health condition in military service, or that he exhibited any psychological symptoms or behavioral changes indicative of a diagnosable mental health condition. A few years after his service, he has been identified as disabled by the Social Security Administration. Unfortunately, available records are not sufficiently detailed to establish clinical symptoms in service or provide a nexus with his misconduct, particularly given his substandard effort in two services. Additional records (e.g., post-service mental health records describing the Petitioner's diagnosis, symptoms, and their specific link to his misconduct) may aid in rendering an alternate opinion.

The AO concluded, "it is my clinical opinion that there is insufficient evidence of a mental health condition that may be attributed to military service. There is insufficient evidence to attribute his separation from service 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 ELS based on your time on active duty. Applicable regulations authorize an uncharacterized ELS if the processing of an individual's separation begins within 180 days of

entry into active service. While there are exceptions 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 for performance and conduct based on your lack of reasonable effort. In reviewing the record, the Board found no evidence to substantiate your contention that you were somehow treated unfairly. The Board determined your discharge is supported by the written notice of deficiencies. Finally, the Board concurred with the AO that there is insufficient evidence that your mental health condition could be attributed to military service. As explained in the AO, available records are not sufficiently detailed to establish clinical symptoms in service or provide a nexus with your misconduct; particularly given your substandard effort in two services.

Therefore, 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,

3/11/2025

