



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

Docket No. 8070-24
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 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 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 Kurta Memo, the 3 September 2014 guidance from the Secretary of Defense regarding discharge upgrade requests by Veterans claiming post-traumatic stress disorder (PTSD) (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. Although you were provided an opportunity to respond to the AO, you chose not to do so.

You enlisted in the Marine Corps and commenced active duty on 15 November 2006. Your pre-enlistment physical examination, on 1 November 2006, and self-reported medical history both noted no psychiatric or neurologic issues, symptoms, or treatment.

On 2 March 2007, your Recruit Training Battalion Commanding Officer was issued a stop order for you due to fraudulent enlistment for your failure to disclose pre-service treatment for depression and attention-deficit/hyperactivity disorder (ADHD).

Unfortunately, the documents pertinent to your administrative separation are not in your official military personnel file (OMPF). Notwithstanding, the Board relies on a presumption of regularity to support the official actions of public officers and, in the absence of substantial evidence to the contrary, will presume that they have properly discharged their official duties. Based on the information contained on your Certificate of Release or Discharge from Active Duty (DD Form 214), you were separated on 20 March 2007 with an "Uncharacterized" entry level separation (ELS), your narrative reason for separation is "Fraudulent Entry into Military Service," your reentry code is "RE-3P," and your separation code is "JDA1," which corresponds to fraudulent enlistment/involuntary discharge/no board.

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 to change your discharge characterization of service and your contentions that you were pushed out of service for the use of Wellbutrin. For purposes of clemency and equity consideration, the Board considered the totality of your application; which consisted solely of what you stated on your DD Form 149 without any additional documentation for the Board's consideration.

As part of the Board's review process, a qualified mental health professional reviewed your contentions and the available records and issued an AO dated 23 December 2024. The AO stated in pertinent part:

Petitioner contends he incurred mental health issues during military service, which may have contributed to the circumstances of his separation from service.

Petitioner indicated that he was separated from service for the use of Wellbutrin, which would imply that he was suffering from depression given the prescription of an antidepressant.

There is no evidence that the Petitioner was diagnosed with a mental health condition during his military service, or that he exhibited any psychological symptoms or behavioral changes indicative of a mental health condition. He has provided no medical evidence in support of his claims. Unfortunately, his personal statement is not sufficiently detailed to establish clinical symptoms or provide a nexus with his requested change for narrative reason for separation.

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 ascertain that his separation was something other than fraudulent entry."

After thorough review, the Board concluded your potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined your uncharacterized ELS remains appropriate. Service regulations direct the assignment of an uncharacterized ELS to service members processed for separation within their first 180 days of active duty. While there are exceptions to this policy in cases of misconduct or extraordinary performance, the Board determined neither applied in your case. The Board also concurred with the AO and determined

that there is insufficient evidence of a mental health condition that may be attributed to military service and insufficient evidence to ascertain that your separation was something other than fraudulent entry. Therefore, the Board found that you were appropriately discharged with an uncharacterized ELS for fraudulently entry into the Navy based on your failure to disclose your preservice mental health history.

As a result, 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,

3/7/2025

