



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: 0659-21
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.

Although your application was not filed in a timely manner, the Board found it in the interest of justice to waive the statute of limitations and consider your application on its merits. A three-member panel of the Board, sitting in executive session, considered your application on 14 July 2021. 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 an advisory opinion (AO) from a qualified mental health professional dated 17 May 2021 and your rebuttal to the AO in the form of supporting documentation. In response to the new supporting documentation, an additional AO was requested and received on 25 June 2021.

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.

You enlisted in the Navy and began a period of active duty on 12 December 2002. On 12 March 2003, you received non-judicial punishment (NJP) for an unauthorized absence and

failure to obey a lawful order. The record reflects that you commenced two periods of unauthorized absence: from 22 February 2005 to 24 March 2005, totaling 30 days, and 28 March 2005 to 4 April 2005, totaling seven days. On 14 April 2005, you were convicted by summary court-martial (SCM) of unauthorized absence, missing movement and wrongful use of a controlled substance. On 19 May 2005, you received your second NJP for wrongful use of a controlled substance.

Unfortunately, the documents related to your administrative separation are not in your official military personnel file. However, your Certificate of Release or Discharge from Active Duty (DD Form 214), reveals that you were separated from the Navy on 7 June 2005 with an other than honorable (OTH) characterization of service, your narrative reason for separation is "Misconduct," your separation code is "HKK," and your reenlistment code is "RE-4."

As part of the Board's review, on 17 May 2021, a qualified mental health professional reviewed your request and provided the Board with an AO. The AO stated that the preponderance of available objective evidence failed to establish you suffered from a mental health condition at the time of your military service or your in-service misconduct could be mitigated by a mental health condition.

In response to your submission of new supporting documentation, a qualified mental health professional reviewed your request and provided the Board with an additional AO on 25 June 2021. The AO states that the additional information submitted does provide new or materially different evidence affecting your application for upgrading your discharge characterization of service. You provided new documentation, which provided the same information. The psychological evaluation, dated 3 December 2018 from Clinical Associates, confirmed diagnoses for Conversion Disorder (Functional Neurological Symptom Disorder) with weakness or paralysis; Major Depressive Disorder, Recurrent, Moderate; and Post Traumatic Stress Disorder (PTSD). Although the psychological evaluation provided the testing results for which the PTSD diagnoses was made, it did not indicate the trauma the diagnosis was based on. In contrast, your 2003 misconduct would not be mitigated as it occurred prior to the trauma. Your use of marijuana also would not be mitigated as you provided an alternative explanation of wanting out of the Navy since you were given a medical diagnosis that could limit your life span, and you would not be able to work on submarines. The AO concluded by opining that based on the available evidence, you may have exhibited behaviors associated with PTSD and some of your in-service misconduct may be mitigated by your PTSD.

The Board carefully reviewed your application, weighed all potentially mitigating factors, and considered your assertion that your SCM should count as time served for your indiscretions. The relief requested is so that your entire military career will not be judged on one event. You contend that: 1) while sailing through the Suez Canal, stopping into port, you saw human body parts from blown up cars that the enemy did to the civilians; 2) you were forced to evacuate an airplane quickly because it came under attack; 3) when you returned from your service overseas, you were not the same person; (4) you wake up having nightmares of people being blown up into millions of pieces and seeing people die, and murdered by the enemy; 5) you have not had decent sleep since you returned from service due to the constant fear of the memories coming back; and (6) it bothered you mentally, seeing innocent people die.

After careful consideration of both advisory opinions, unfortunately, even under the liberal consideration standard, the Board discerned no procedural defect, impropriety, or inequity in your discharge and determined your service was appropriately characterized as other than honorable. The Board concluded there was insufficient evidence of an error or injustice that warrants upgrading your characterization of service.

The Board carefully considered all potentially mitigating factors to determine whether the interests of justice warrant relief in your case in accordance with the Wilkie Memo. These included, but were not limited to, your contentions as previously discussed, submission of supporting documentation and your desire to upgrade your discharge. However, based upon this review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined your misconduct as evidenced by two NJPs and SCM conviction, outweighed these mitigating factors. Accordingly, given the totality of the circumstances, the Board determined 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,

7/27/2021

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Executive Director

Signed by █