



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: 1442-21

Ref: Signature Date

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Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to Title 10, United States Code, Section 1552. After careful and conscientious consideration of the entire record, the Board for Correction of Naval Records (Board) found the evidence submitted was 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 13 September 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). Additionally, the Board considered a 14 July 2021 advisory opinion (AO) furnished by qualified mental health provider.

You enlisted in the Navy and commenced a period of active duty on 2 April 1992. Between 17 December 1992 and 13 May 1993, you received at least six counseling sessions from leadership in your squadron concerning your performance and behavior. These counseling sessions were documented in writing. On 27 May 1993, you received nonjudicial punishment for disobeying an order by wearing an earring on two occasions and for consuming alcoholic beverages in a prohibited area. On 20 September 1993, you received nonjudicial punishment for breaching the peace. On 23 December 1993, you received nonjudicial punishment for striking a civilian in the

face. On 7 July 1994, you received nonjudicial punishment for a period of unauthorized absence totaling two days, disobeying an order by consuming an alcoholic beverage while in a duty status, and assault on a petty officer. On 15 July 1994, you were notified of the initiation of administrative separation processing and your rights in connection therewith. You elected your right to have an administrative board. On 14 September 1994, the administrative board found that you committed a serious offense, committed a pattern of misconduct, and that you had a personality disorder. The administrative board voted that you should be discharged and that your characterization of service should be under other than honorable conditions. After your board was held, it was determined that the senior member of the board was a Marine officer and that you were entitled to have a Navy officer as the senior member. You were offered the right to have another administrative board and you waived that right. On 29 December 1994, your commanding officer submitted the results of the administrative board to the discharge authority, recommending that you be discharged with an other than honorable characterization of service. On 25 January 1995, the discharge authority directed that you be discharged with an other than honorable characterization of service, and you were so discharged that day.

The Board carefully considered all potentially mitigating factors in your petition to determine whether the interests of justice warrant relief in your case including in accordance with the Wilkie Memo. You contend in your petition that your character of service is inappropriate due to your underlying mental conditions that were exacerbated during your service and represents the underlying cause of the complained misconduct. You also contend you never received notice of your rights to appeal your discharge status and had you been, you would not have been able to comprehend due to your illiteracy. Finally, you contend that the Department of Veterans Affairs failed in its duty to assist you through its failure to provide you notice of how to appeal your discharge.

In connection with your assertion that you suffered from a mental health condition while you were on active duty, which served to mitigate you misconduct, the Board requested, and reviewed, the AO. The AO explained:

Petitioner's in-service records contained an enlistment physical examination in which Petitioner denied any history of mental health symptoms or conditions. In-service, he underwent a psychiatric evaluation and was diagnosed with a Personality Disorder, Not Otherwise Specified. He was found responsible for his actions, fit for return to duty, and recommended for expeditious administrative separation for unsuitability for service and ongoing risk of harm to self or others. His in-service record did not contain evidence of a diagnosis of additional mental health conditions or psychological/behavioral changes, which may have indicated additional mental health conditions. Throughout his disciplinary actions, counselings, psychiatric evaluation, and administrative processing, there were no concerns cited which would have warranted referral to mental health resources. Although he claimed to have suffered a mental health condition, he did not provide any description of mental health symptoms that would meet the criteria for a mental health disorder, how those symptoms interfered with his ability to function, or related to his in-service misconduct. His post-discharge clinical

records did not provide evidence of an in-service mental health disorder or linkage of any mental health symptoms to his in-service misconduct.

The AO concluded, “based on the available evidence, it is my considered medical opinion the preponderance of objective evidence failed to establish Petitioner suffered from an unfitting or medically disqualifying mental health condition at the time of his military service, or his inservice misconduct may be mitigated by an unfitting or medically disqualifying mental health condition.”

Based upon its review, the Board concluded the potentially mitigating factors that you raised were insufficient to warrant relief. With respect to your contention relating to a mental health condition, the Board concurred with the findings of the AO. With respect to your contention that you were not apprised of your rights to appeal your discharge, the Board observed that you were assigned an attorney with respect to your discharge, that you presented a case before an administrative board with the assistance of an attorney, and that you waived your right to a new administrative board, also with the advice of counsel. Ultimately, the Board determined that your repeated misconduct despite repeated counseling sessions outweighed the mitigating factors that you presented. 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,

9/20/2021

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Executive Director

Signed by: █