



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: 2086-21
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 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.

A three-member panel of the Board, sitting in executive session, considered your application on 8 November 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 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, 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). In addition, the Board considered the advisory opinion (AO) furnished by a qualified mental health professional dated 26 May 2021, which was previously provided to you, your rebuttal to the AO dated 10 August 2021, and AO response to your rebuttal dated 10 October 2021.

You enlisted in the Navy and began a period of active duty on 23 April 1985. On 22 May 1985, you provided a statement regarding your involvement with civil authorities. On 6 June 1985, your command forwarded results of an investigation regarding you enlisting in the Navy under fraudulent conditions, in that you failed to disclose your involvement with civil authorities. It was found that you were arrested on 25 May 1982, and charged with receiving stolen property, criminal conspiracy and unauthorized use of an automobile or other vehicle. Apparently, all the charges were dropped and the case dismissed. You did not include this incident on your enlistment documents. However, based on your performance during recruit training, desire to remain in the Navy, and demonstrated potential for future useful service, it was recommended that you be retained on active duty in the Navy with a retention warning.

On 17 July 1985, you were issued an Administrative Remarks (Page 13) entry in your military record that notifying you that you were being retaining in the Navy. However, you were warned that any further deficiencies and/or misconduct could result in administrative discharge action. On 10 July 1986, your Security Clearance was revoked. On 10 November 1986, you received nonjudicial punishment (NJP) for dereliction of duty by wrongfully accepting travel orders, which you were not, authorized, three specifications of fraud, larceny of a Michelin automobile tire, operating a government vehicle in a reckless manner by driving at a speed in excess of 60 miles per hour, and unauthorized absence. On 8 January 1987, you were issued a Page 13 entry regarding being relieved of administrative office Yeoman duties due to your revoked security clearance. At that time, you refused to sign the Page 13 entry. On 28 May 1987, you were convicted by special court-martial (SPCM) of uttering check(s) without sufficient funds, and wrongful use of controlled substance. You were sentenced to a period of confinement at hard labor, a forfeiture of pay, a reduction in paygrade, and a bad conduct discharge (BCD). On 3 June 1988, you were discharged from the Navy with a BCD.

A qualified mental health professional reviewed your request for correction to your record and provided the Board with an AO regarding your assertion that you were suffering a mental health condition during your service. The AO noted that based on the available evidence, the preponderance of available objective evidence failed to establish you were diagnosed with a mental health condition, 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. On 10 August 2021, in response to the AO, you stated that: (a) you developed a generalized disorder as a result of a traumatic experience during your childhood; (b) your severe anxiety caused you significant distress at work, and with relationships in your life; and (c) your anxiety disorder caused you to be derelict in your duties, and led you to make choices what were detrimental to your military service, for which you are regretful. In response to your rebuttal to the AO, a qualified mental health professional noted that you clarified your Anxiety Disorder originated from childhood sexual abuse. You contended your in-service problems with substance abuse, and behavioral issues were, caused by your pre-existing but undiagnosed anxiety disorder. You included a 1 August 2021, letter from Mandarin Counseling stating you had been treated from for a diagnosis of Anxiety Disorder with counseling. The social worker explained the goal of counseling was decreasing anxiety from your four years of "sexual abuse at the hands of a school teacher" and the current effects on your marriage and family relationships. There was no mention of your military service or misconduct. Though you provided new clinical information about your post-discharge mental health diagnosis and treatment, there was no new or material information provided about your military service and misconduct that affected the original AO. Therefore, the original AO stands as written.

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 assertions that the mental illness you were suffering with led to the incident that caused your discharge. Based upon this review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your NJP and SPCM conviction, the fact that you were, retained in the Navy after failing to disclose your pre-service involvement with civil authorities, and warned of the consequences of further misconduct outweighed these mitigating

factors. Additionally, the Board concurred with the AO that based on the available evidence, the preponderance of available objective evidence failed to establish you were, diagnosed with a mental health condition, 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. 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,

11/18/2021

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Executive Director
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