



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



Docket No: 2567-21

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 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 for Correction of Naval Records, sitting in executive session, considered your application on 17 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), and the relevant Advisory Opinion along with your response to the Advisory Opinion.

You enlisted in the Navy and began a period of active duty on 2 September 1995. Your record indicates that you began a period of unauthorized absence (UA) on 6 September 1996, which ended with your surrender on 30 September 1996. You began a second period of UA on 7 October 1996, which terminated by surrender on 21 October 1996. Your service record indicates that in May 2000, you began an assignment to NAS [REDACTED]. You completed a pre-separation counseling checklist on 19 July 2000. On 28 July 2000, you were discharged on the basis of an administrative separation in lieu of trial by court martial, and received an other than

honorable characterization of service and a reentry (RE) code of RE-4. Your available service record does not reflect your complete administrative separation package.

In your application for correction, you request an upgrade and state that you were suffering from undiagnosed Post Traumatic Stress Disorder (PTSD). You contend that while serving onboard the USS █, there was a tragic accident during the █ cruise with several service members injured and one killed. You claim that you feared for your safety, suffered from nightmares, insomnia, and gradual hearing loss over the years, all of which contributed to your lack of judgment during that time. You also note that you were having some personal issues at home. You provide a character reference in support of your application, and note that you earned a Nursing Degree since your discharge.

As part of the review process, a Licensed Clinical Psychologist reviewed your request and issued an Advisory Opinion dated 4 September 2021. The Advisory Opinion noted that you did not provide clarifying information about the trauma related to undiagnosed PTSD. The Advisory Opinion stated that the preponderance of available evidence failed to establish that you suffered from a mental health condition at the time of your military service or that your in-service misconduct could be mitigated by a mental health condition. The Advisory Opinion was provided to you, and you submitted a response in which you provided Veterans Affairs (VA) treatment notes. Your response was reviewed by the Licensed Clinical Psychologist who concluded that there is no new or material evidence presented that would require a revision of the original Advisory Opinion.

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 statements that you were suffering from undiagnosed PTSD, nightmares, insomnia, hearing loss and struggling with personal issues at home. With regard to your claim of a mitigating mental health condition, the Board reviewed the analysis of the Advisory Opinion and the rebuttal information you provided. Even in consideration of the supplemental information you provided, the Board substantively agreed with the conclusions of the Advisory Opinion and found that you did not provide sufficient evidence to establish that you were suffering from a mental health condition at the time of your Naval service that mitigated your misconduct. The Board noted your two periods of UA in 1996, and considered that your Certificate of Release or Discharge from Active Duty (DD Form 214) reflects that you requested an administrative separation to escape trial by court martial in 2000. Applying the presumption of regularity, the Board determined that despite the absence of your complete administrative separation package, your DD Form 214's documentation of a request for an other than honorable discharge supports your current characterization of service. The Board determined that your other than honorable discharge appears to have been issued without error or injustice, and that corrective action is not warranted. Accordingly, the Board denied your request.

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,

9/17/2021

[REDACTED]

Executive Director

[REDACTED]