



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: 2751-21
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.

Although you did not file your application in a timely manner, the statute of limitations 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 18 October 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 24 August 2021 advisory opinion (AO) furnished by qualified mental health provider, a copy of which was provided to you, and to which you did not provide a response.

You enlisted in the Navy and commenced a period of active duty on 9 July 1991. On 3 August 1992, you received a conviction by civilian authorities in █, for driving under the influence. On 20 February 1993, you received nonjudicial punishment for failing to go to morning physical training muster. On that day you also received a formal written warning concerning your misconduct and the consequences of further misconduct. On 11 March 1994, you received nonjudicial punishment for failing to go to muster and for disobeying an order on two occasions. On 12 March 1994, you were notified of the initiation of administrative

separation processing and your rights in connection therewith due to misconduct due to commission of a serious offense, misconduct due to a pattern of misconduct, and misconduct due to a civilian conviction. You waived your right to an administrative discharge board. On 21 March 1994, the discharge authority directed that you be discharged with an other than honorable characterization of service, and on 31 March 1994, you were so discharged.

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 that, while you were on active duty, you were in the midst of several mental health disorders, and that you have been diagnosed, post-service, with PTSD, which serves to mitigate the misconduct that resulted in your discharge under other than honorable conditions. You also provided information concerning your university studies at the █.

In connection with your assertions relating to mental health conditions, the Board requested the AO. The AO explained that:

Petitioner's in-service record revealed an enlistment physical examination in which he denied any history of pre-enlistment mental health or substance abuse issues. On his discharge physical examination, he endorsed several physical complaints as well as head injury (explained as four concussions prior to enlistment from ages 12-16), frequent trouble sleeping, and depression/excessive worry, though he stated he was in "excellent health." He described to the examining physician his insomnia and depression/excessive worry were occasional and associated with his tension-induced headaches. He was found physically qualified for discharge.

The remainder of Petitioner's in-service records did not contain evidence of a diagnosis of a mental health condition or psychological/behavioral changes, which may have indicated a mental health condition. Throughout his disciplinary actions, counselings, and administrative processing, there were no concerns noted which would have warranted referral to mental health resources. Although he claimed PTSD/mental health condition and post-discharge diagnosis of PTSD, he did not provide any description of symptoms, which would meet the criteria for a mental health condition, indicate how those symptoms interfered with his ability to function, or linked his symptoms to his 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 PTSD or an unfitting mental health condition at the time of his military service, or his in-service misconduct could be attributed to PTSD or an unfitting 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. The Board commended you on your engagement in university studies. The Board, however, determined that there was no error or

injustice in your record. Specifically, the Board found that the misconduct you engaged in while on active duty supported your characterization of service. Specifically, you received a civilian conviction for driving under the influence, and thereafter received nonjudicial punishment, after which you received a formal written warning concerning the consequences of further misconduct. Despite the written warning, you received nonjudicial punishment again. 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, _____

11/3/2021

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Executive Director

Signed by: █