



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

Docket No: 2781-21
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 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 13 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).

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 on 26 August 1971. During the period from 11 January to 15 August 1972, you received two non-judicial punishments (NJP) for disrespectful in language toward a superior petty officer, underage drinking, possession of alcohol, and disorderly conduct. On 26 April 1973, you requested separation from the Navy due to being a Conscientious Objector. On 29 June 1973, you received an interview from the chaplain on the grounds of being a Conscientious Objector. The chaplain determined you were a Conscientious Objector and recommended you be separated from the Navy.

On 6 August 1973, you received a psychiatric evaluation, which diagnosed you with a passive aggressive personality and noted that you were only attempting to obtain a discharge from the Navy. On 10 October 1983, your commanding officer (CO) directed the Staff Judge Advocate (SJA) to investigate your claim of being a Conscientious Objector. On 18 October 1973, you received an additional NJP for sleeping during working hours and being in an unauthorized absence status for five hours. On 23 October 1973, The SJA determined you were a Conscientious Objector and recommended you be discharged from the Navy. Subsequently, you were notified of pending administrative separation action by reason of being a Conscientious Objector. After electing to waive your rights, your CO forwarded your package to the separation authority (SA) recommending your discharge by reason of Conscientious Objector, with general under honorable conditions characterization of service. The SA approved the CO's recommendation and on 6 December 1973, you were so discharged.

Your contention that you suffered from a Mental Health Condition (MHC) was fully and carefully considered by the Board in light of the Secretary of Defense's Memorandum, "Supplemental Guidance to Military Boards for Correction of Military/Naval Records Considering Discharge Upgrade Requested by Veterans Claiming Post Traumatic Stress Disorder" of 3 September 2014 and the "Clarifying Guidance to Military Discharge Review Board and Boards for Correction of Military/Naval Records Considering Requests by Veterans for Modification of their Discharge Due to Mental Health Conditions, Sexual Assault, or Sexual Harassment" memorandum of 25 August 2017. The MHC provided the Board with an Advisory Opinion (AO) dated 8 September 2021 regarding your assertion of suffering from a Post-Traumatic Stress Disorder (PTSD). The AO stated in part that your misconduct mainly occurred during 1971 and 1972, which was prior to either purported trauma (1973). In fact, the only misconduct that occurred after either purported trauma was sleeping during working hours. You originally contended you applied for Conscientious Objector status, after the purported trauma (hurricane) and speaking with a Navy Chaplain. In contrast, you contended in your AO rebuttal "I was not discharged as a Conscientious Objector; I believe I was illegally discharged to protect Chief _____", the superior who allegedly assaulted you. Based on the available evidence, it is my considered clinical opinion even though your presented evidence of post-discharge diagnosis of service connected PTSD; the preponderance of available evidence fails to establish PTSD mitigated your in-service misconduct.

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, the AO, your rebuttal letter, your desire to upgrade your discharge and contention of a PTSD as a reason for your general under honorable conditions characterization of service. The Board also noted your contention that you that the Master Chief assaulted you and brought false charges against you. The Board noted that there is a lack of evidence to support that your misconduct arose from PTSD as a result of being assaulted by the Master Chief. Lastly, the Board noted that there is no evidence in your record, and you submitted none, to support your contention of almost being washed over the side of the ship during a hurricane.

Based upon this review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board found no nexus between a PTSD and your general under honorable conditions characterization of service. The Board also concurred with

the AO's statement that there was insufficient evidence to support your contention that you had service-connected PTSD that contributed to your general discharge.

Even under the liberal consideration standard, the Board found that your misconduct, as evidenced by your three NJP's, final Marks of 2.6/3.7, and separation due to being a Conscientious Objector, outweighed these mitigating factors. 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,

10/22/2021

Executive Director