



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



Docket No: 2845-21

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 24 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.

You enlisted in the Navy and began a period of active duty on 11 June 2001. On 27 December 2001, you received nonjudicial punishment (NJP) for driving under the influence of alcohol. On 5 January 2003, you received a second NJP for failure to obey a lawful order. On 26 June 2003, you were counseled regarding failure to meet body composition assessment standards. Your evaluation for the period of 13 March 2004 to 15 July 2004 stated that you were one of the most highly motivated and productive Airman in the command, but that you had a fourth Physical Fitness Assessment failure. On 17 March 2005, you received a third NJP for violating Article 80 (attempts). On 18 March 2005, Commanding Officer, [REDACTED] authorized your discharge with a general characterization of service. On 8 April 2005, you were discharged



from the Navy on the basis of a Pattern of Misconduct, and received a general discharge and a reentry (RE) code of RE-4.

In your application for correction, you state that you received an other than honorable discharge and ask that your characterization of service be upgraded. You assert that you were suffering from a military related mental disability during active duty and that you were not given legal representation prior to signing the other than honorable discharge. You further state that your mental disability is ongoing, and that you suffer from dreams and nightmares about working on flight deck of an aircraft carrier.

As part of the review process, a Physician Advisor reviewed your request and issued an Advisory Opinion dated 31 July 2021. The Advisory Opinion noted that your 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. The Advisory Opinion also stated that throughout your disciplinary actions, counseling, and administrative processing, there were no concerns cited which would have warranted referral to mental health resources. Furthermore, you did not provide any description of your purported trauma or symptoms that would meet the criteria for Post Traumatic Stress Disorder (PTSD) or a Traumatic Brain Injury (TBI). The Advisory Opinion stated that the preponderance of available evidence failed to establish that you were diagnosed with PTSD or TBI, suffered from PTSD or TBI at the time of your military service, or that your in-service misconduct could be attributed to PTSD or TBI. The Advisory Opinion was provided to you, and you were given 30 days in which to submit a response. When you did not provide a response within the 30-day timeframe, your case was submitted to the Board for consideration.

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 contention that you were suffering from a mental health condition while you were in the Navy and that you have ongoing symptoms to include nightmares about the dangers of working onboard an aircraft carrier. The Board also noted your claim that you were wrongfully denied legal representation prior to your discharge. With regard to your claim of a mitigating mental health condition, the Board reviewed the information you submitted along with the analysis and findings of the Advisory Opinion. The Board substantively concurred with the Advisory Opinion and determined that you did not provide sufficient evidence to establish that you suffered from a mental health condition at the time of your service that mitigated the three NJPs reflected in your service record.

The Board considered your claim that you were wrongfully denied legal representation during the administrative discharge proceedings and that you were separated with an other than honorable characterization of service. The Board noted that your Certificate of Release or Discharge From Active Duty (DD Form 214) reflects a general discharge, not an other than honorable characterization of service. Although the entirety of your administrative separation package is not reflected in your available records, the Board considered that since you had less than six years of service, the Navy was authorized to administratively separate you with a general characterization of service without entitlement to an administrative separation board.

[REDACTED]

The Board considered that you received a general characterization of service (which is not adverse) and applied the presumption of regularity to conclude your administrative separation proceedings were executed without error or injustice. Apart from the fourth PFA failure noted in your record, the Board found that the three NJPs supported the issuance of a general rather than honorable characterization of service. The Board determined that your general discharge on the basis of misconduct 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,

10/18/2021

[REDACTED]

Executive Director

[REDACTED]