



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: 3189-21
Ref: Signature Date

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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 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 4 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, 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 the advisory opinion (AO) furnished by qualified mental health provider dated 16 August 2021, which was previously provided to you. Although you were afforded an opportunity to submit a rebuttal, you did not do so.

You enlisted in the U. S. Navy (USN) and began a period of active duty on 24 July 1986. On 16 October 1987, you received your first nonjudicial punishment (NJP) for dereliction in the performance of duties for sleeping on watch. On this date you also received a counseling warning regarding your multiple instances of tardiness, minor unauthorized absences (UAs), disrespect to superiors, and failure to obey lawful orders. This counseling noted you were being retained in the USN but advised you that further misconduct could result in a punitive administrative discharge or separation. On 21 April 1988, you received a second NJP for three specifications of UA. On

7 April 1989, you received another counseling concerning your need to become more aggressive and serious towards your job assignments, attention to detail and goal setting. On 19 May 1989, you received a third NJP for three additional specifications of UA. On 28 July 1989, you received a fourth NJP for one specification of UA and for failing to obey a lawful regulation by having the word “tricky” shaved into the back of your hair. On 28 August 1989, as a result of the aforementioned misconduct, you were notified that you were being processed for administrative separation due to a pattern of misconduct. During this process, you exercised your right to consult with counsel and to have your case heard before an administrative discharge board (ADB). On 6 December 1989, your case was heard at an ADB. The ADB recommended you be separated with a general (GEN) characterization of service due to misconduct. In January 1990, the discharge authority directed you be discharged with a GEN characterization of service for misconduct by reason of pattern of misconduct and on 7 March 1990, you were discharged.

Your request 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.

As part of the Board’s review, 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 are dealing with PTSD and this diagnosis might have mitigated the misconduct that led to you receiving a GEN discharge. The AO noted your in-service record revealed misconduct to include a plethora of UAs, making personal phone calls on a government phone, and sleeping while on watch. The AO further noted, during your ADB you stated you were sorry for your mistake and wanted to remain on active duty. When asked, you attributed your lateness (UAs) to traffic accidents, a flat tire, marital problems, personality conflict with your Chief and a lack of supervision. The AO further noted you did provide a Rating Decision Letter from the Veterans Administration, dated 20 October 2020, that confirmed service connection PTSD with Major Depressive Disorder with an evaluation of 100 percent. The AO noted that the preponderance of available objective evidence failed to establish you suffered from PTSD at the time of your military service or your in-service misconduct could be mitigated to PTSD.

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 desire to upgrade your discharge and your contention that you were dealing with PTSD and MHC for which you had to apply self-medication for over 25 years after you were discharged. The Board noted, aside from your DD Form 214 and Department of Veterans Affairs rating letter, you did not submit character letters or post-service documents to be considered for clemency purposes. Based upon this review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined your misconduct, as evidenced by your NJPs, outweighed these mitigating factors. Additionally, the Board concurred with the AO. 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,

10/22/2021

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Executive Director

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