



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



Docket No: 3545-21

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 30 July 1999. Administrative Remarks dated 30 November 1999 reflect that you were counseled regarding returning late from liberty and that you were subsequently awarded extra military instruction, which you did not complete in an acceptable manner. Your record reflects a period of time lost from 8 August 2000 through 3 November 2000. In December 2000, you were evaluated at Naval Hospital [REDACTED] Mental Health Clinic and diagnosed with Occupational Problems, Personality Disorder NOS with Histrionic and Narcissistic Features. On 4 January 2001, you received nonjudicial punishment (NJP) for a period of unauthorized absence (UA) and missing ship's movement. On 10 January 2001, you were notified of administrative separation proceedings

against you; you waived your right to appear before an administrative separation board. On 18 April 2001, Commanding Officer, ██████████ recommended that you be discharged on the basis of Misconduct- Commission of a Serious Offense. On 1 May 2001, you were discharged from the Navy on the basis of Misconduct and received an other than honorable discharge and a reentry (RE) code of RE-4.

In your application for correction, you request an upgrade to your other than honorable discharge and contend that no consideration was given to the compelling circumstances contributing to the basis of your discharge. You provide a personal statement and in-service Medical Records to support your request. You state that at the time of your discharge, consideration was not given to your mental health conditions to include Post Traumatic Stress Disorder (PTSD). You contend that you were diagnosed with a mental disorder that was aggravated after you were viciously attacked by a fellow Sailor and that you were experiencing significant personal problems at home, which contributed to your UA. You claim the command did not consider your family emergency, your family obligations, your age, your cultural background, your education level, and judgmental maturity level.

As part of the review process, a Licensed Clinical Psychologist reviewed your request and issued an Advisory Opinion dated 10 August 2021. The Advisory Opinion noted that your in-service records did not contain evidence that you were diagnosed with an unfitting mental condition or reported psychological symptoms/behavioral changes indicative of a diagnosable unfitting mental health condition. The Advisory Opinion stated that your symptoms were considered “appropriate to the circumstances and situational.” The Advisory Opinion concluded that the preponderance of available evidence failed to establish that your in-service misconduct could be mitigated by a mental health condition. 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 statements that you were suffering from PTSD, that you had a mental health condition that was aggravated by military service, and that you had family stressors and personal circumstances which were not appropriately considered by your command. With regard to your claim of a mitigating mental health condition, the Board noted your in-service mental health diagnosis and reviewed the analysis of the Advisory Opinion. The Board substantively agreed with the conclusions of the Advisory Opinion, and found that even in consideration of your diagnosis of Occupational Stressors and Personality Disorder, you were accountable for your behavior. Even in consideration of your personal circumstances, background and age, the Board determined that absent a mental health condition that mitigated your misconduct, that your other than honorable discharge was supported by your period of UA from 8 August to 3 November 2000, and by your missing ship’s movement. The Board concluded that your current discharge was proper as issued and that corrective action is not warranted.

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

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Executive Director

Signed by: █