



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: 3635-21

Ref: Signature Date



Dear █:

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 limitation 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 1 November 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 27 August 2021 advisory opinion (AO) furnished by a qualified mental health provider.

You enlisted in the Navy and commenced a period of active duty on 24 August 1988. On 21 August 1992, you reenlisted in the Navy and commenced another period of active duty. On 3 September 1993, you received nonjudicial punishment for insubordinate conduct and assault, and you also received a formal written warning concerning the consequences of your further misconduct. On 8 August 1994, you missed your ship's movement. It was later determined that the reason you missed ship's movement was because you were apprehended by state police in █ and placed into pretrial confinement for civil charges. On 28 July 1995,

you were convicted by civil authorities for felonious possession of cocaine and transportation of a handgun and you were sentenced to 18 months confinement. On 26 March 1996, you were notified of the initiation of administrative separation processing due to commission of a serious offense and due to a civilian conviction and your rights in connection therewith, and you waived your right to an administrative board. On 27 March 1996, your commanding officer recommended that you be discharged with an other than honorable characterization of service. On 28 March 1996, the discharge authority directed that you be discharged with an other than honorable characterization of service, and on 28 March 1996 you were so discharged.

The Board carefully considered all potentially mitigating factors in your current petition to determine whether the interests of justice warrant relief in your case including in accordance with the Wilkie Memo. You contend in your petition that the misconduct that led to your discharge should be mitigated due to undiagnosed PTSD from incidents that occurred during your military service. Specifically, you state that you were present at a boiler explosion on your ship in August 1991, and personally saw many Sailors narrowly escape serious injury, and that you felt guilty that you survived unhurt when others sustained varying degrees of injuries. You further contend that in late 1992, you experienced a gunshot wound to your calf during a bar fight between Sailors and local civilians. You stated that after these events, you experienced flashbacks and nightmares, intrusive memories, depression, anxiety, helplessness, and other mental health concerns. In support of your petition, you included a mental health evaluation from a medical professional, who diagnosed you with PTSD originating from the two traumatic events that you described. In addition, you contend that an upgrade to your discharge characterization is justified based on your service record and the good quality of your service.

In connection with your assertions relating to mental health conditions, the Board requested, and reviewed, the AO. The AO is considered favorable, and explained that, during your service, “there were no concerns noted which would have warranted referral to mental health resources.” The AO continued:

Petitioner provided a personal statement describing in-service traumatic events and subsequent psychological symptoms and behavioral changes consistent with PTSD. He also evidenced behavioral markers consistent with PTSD to include decreased occupational performance from his prior honorable service during his first enlistment, substance abuse (as a maladaptive self-medication strategy against psychological distress), avoidance behavior (UA and missing ship’s movement), and reckless behavior and poor judgment (buying a handgun due to fear of future assault but not registering it). He provided a post-discharge mental health evaluation validating his diagnosis of PTSD, in-service origins and clinical manifestations of PTSD while on active military service, as well as opining that his military misconduct could be attributed to his PTSD.

The AO concluded, “it is my considered medical opinion the preponderance of objective evidence supports Petitioner’s contention of suffering from PTSD at the time of his military service, and that his in-service misconduct could be mitigated by his experience of PTSD.”

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 acknowledged the findings of the AO. The Board observed that in your most recent enlistment in the Navy, during which you were discharged, you received nonjudicial punishment for insubordinate conduct and for assault. During that enlistment you also received your civilian conviction. Thus, the Board reasoned that, although some of your misconduct may be mitigated by your mental health condition, the AO and your civilian medical provider did not address the fact that one of the bases for your discharge was due to a civilian conviction for felonious possession of cocaine and transportation of a firearm, for which you were sentenced to 18 months of confinement. The Board determined that a sentence of that length demonstrated that the charges were not insignificant. In addition, the Board noted that your petition did not provide supporting factual evidence relating to the claims that you have made, and there is no such evidence in your service record. 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,

11/6/2021

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Executive Director

Signed by: █