



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: 4290-21
Ref: Signature Date

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Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to 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 19 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), and the relevant Advisory Opinion.

You enlisted in the Navy and began a period of active duty on 6 December 2001. On 22 November 2004, you received nonjudicial punishment (NJP) for attempts, false official statement, and conduct prejudicial to good order and discipline of the Armed Forces. On 15 August 2006, you received NJP for desertion, absence without leave, and missing movement. Your available record indicates that administrative separation proceedings were initiated against you due to misconduct. On 6 November 2006, you were discharged on the basis of misconduct (desertion) 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 discharge to reflect at least a general characterization of service. You state that you were an excellent Sailor for over four years who made a bad mistake. You note you received awards during your service, and contend that Post Traumatic Stress Disorder (PTSD) and other mental health issues relate to your request. You state that you feel like your current discharge is impacting your ability to obtain gainful employment. You also claim that your wife was serving at the same time as you were discharged, and that she received a general characterization of service for being absent without leave for a similar amount of time.

As part of the review process, a Licensed Clinical Psychologist reviewed your request and issued an Advisory Opinion dated 8 October 2021. The Advisory Opinion noted that there is no evidence of a diagnosed mental health condition in the provided records, and that you did not provide a description of specific traumatic events or psychological symptoms that would comprise a mental health diagnosis. The Advisory Opinion found that there is insufficient evidence of a diagnosis of PTSD or other mental health condition, or evidence of a mental health condition that can be attributed to your military service. Furthermore, the Advisory Opinion determined that there is insufficient evidence that your misconduct could be attributed to 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 desire to upgrade the characterization of your discharge, and your contention that your wife received a general discharge for a similar offense. The Board also considered that potential likelihood that you were suffering from PTSD and other mental health issues. The Board considered the analysis and conclusions of the Advisory Opinion, and concurred substantively with its determination that there is insufficient evidence to establish that you suffered from a mental health condition during your military service that may have mitigated your misconduct. The Board also considered the entirety of your service to include your early period of enlistment and your awards. The Board also considered your statement that your wife, who you claim was similarly situated to you, had the same length of unauthorized absence but received a general characterization of service upon her discharge rather than an other than honorable. Even taking into account the mitigating factors and matters of clemency, the Board found that your two NJPs which included misconduct of desertion, supported your receipt of an other than honorable discharge and that a change to your characterization of service 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,

12/15/2021

[REDACTED]

Executive Director

[REDACTED]