



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: 4427-21
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 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.

The Board determined that your personal appearance, with or without counsel, would not materially add to their understanding of the issues involved. Therefore, the Board determined that a personal appearance was not necessary and considered your case based on the evidence of record.

A three-member panel of the Board, sitting in executive session, considered your application on 22 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 the 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). In addition, the Board considered the advisory opinion (AO) furnished by a qualified mental health professional dated 29 September 2021, which was previously provided to you.

You enlisted in the Navy and began a period of active duty on 21 March 1994. On 5 December 1996, you were notified that you were being retained in the Navy after being counseled regarding receiving two letters of indebtedness, unauthorized absence (UA), poor performance, and attention to detail on company level personnel inspections. You were, warned that failure to correct your deficiencies could result in administrative discharge action. On 25 February 1997, counseled concerning your poor performance and attention to detail on personal issues. You

were warned that failure to correct your deficiencies could result in administrative discharge action. On 25 March 1997, you received nonjudicial punishment (NJP) for failing to go to your appointed place of duty. On 4 April 1997, you were, counseled and warned of administrative discharge action regarding your pattern of misconduct. On 10 April 1997, you received NJP for being absent from your appointed place of duty, and failure to go to restricted personnel muster. On 11 July 1997, you were, counseled and warned of administrative discharge action regarding UA. On 30 July 1997, you received NJP for failing to be at your appointed place of duty, and disobeying a lawful order. On 14 October 1997, you were, convicted by summary court-martial (SCM) of four specifications of missing restricted personnel musters, and breaking restriction. On 12 November 1997, you were, notified of administrative discharge action due to a pattern of misconduct. At that time, you elected to have your case heard before an administrative discharge board (ADB). On 4 October 1997, you were, arrested by █ for driving under the influence of alcohol. At that time, a civilian court date was pending. On 12 December 1997, you informed your commanding officer that you elected to waive your right to have your case heard before an ADB. On 7 January 1998, your case was forwarded to the separation authority recommending that you receive an other than honorable (OTH) discharge. On 23 January 1998, the separation authority directed that you receive an OTH discharge due to a pattern of misconduct. On 6 February 1998, you were, discharged from the Navy with an OTH characterization of service.

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 were suffering a mental health condition during your service. The AO noted that though you carry a post-discharge diagnosis of Major Depression, the preponderance of objective evidence contemporary to your military service failed to establish you exhibited psychological symptoms or behavioral changes indicative of a mental health condition at the time of your military service, or that your in-service misconduct could be attributed to an unfitting mental health condition.

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 assertions that you were, diagnosed with major depression, which was failed to be diagnosed while you were in the military. Additionally, the loss of your marriage, failure of military medical personnel to diagnose you with major excessive snoring, constant oversleeping, sleep apnea, and neurological disorders which lead to you going UA a lot of times. Based upon this review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your three NJPs, SCM conviction, and the fact that you were, counseled and warned of the consequences of further misconduct on more than one occasion outweighed these mitigating factors. Additionally, the Board concurred with the AO, that though you carry a post-discharge diagnosis of Major Depression, the preponderance of objective evidence contemporary to your military service failed to establish you exhibited psychological symptoms or behavioral changes indicative of a mental health condition at the time of your military service, or that your in-service misconduct could be attributed to an unfitting mental health condition. 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 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,

12/7/2021

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Executive Director

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