



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: 4649-21
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 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 22 December 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). The Board also considered an advisory opinion (AO) from a qualified mental health professional dated 12 November 2021, which was previously provided to you.

You enlisted in the Navy and began a period of active duty on 9 April 1979. On 3 September 1979, you commenced a period of unauthorized absence (UA). Subsequently, your UA period concluded upon your return to military authorities on 17 September 1979, totaling 14 days. On 18 October 1979, you received non-judicial punishment (NJP) for unauthorized absence. On 8 November 1979, you commenced a period of UA, this period of UA concluded upon your return to military authorities on 18 April 1980, totaling 160 days. On 19 June 1980, you received your second NJP for an unauthorized absence totaling one day. The record further reflects prior to your administrative discharge date, you had three additional periods of UA totaling four days, eighteen days, and five days. Unfortunately, the documents pertinent to your administrative

separation are not in your official military personnel file (OMPF). Notwithstanding, the Board relies on a presumption of regularity to support the official actions of public officers and, in the absence of substantial evidence to the contrary (as is the case at present), will presume that they have properly discharged their official duties.

Based on the information contained on your Certificate of Release or Discharge from Active Duty (DD Form 214), it appears that you submitted a voluntary written request for an other than honorable (OTH) discharge for separation for the good of the service in lieu of trial by court-martial. In the absence of evidence to the contrary, it is presumed that prior to submitting this voluntary discharge request, you would have conferred with a qualified military lawyer, you would have been advised of your rights and warned of the probable adverse consequences of accepting such a discharge. As part of this discharge request, you would have acknowledged that your characterization of service upon discharge would be other than honorable (OTH). On 23 January 1981, you were discharged from the Navy with an OTH characterization of service.

As part of the Board's review, a qualified mental health professional reviewed your request and provided the Board with an AO on 12 November 2021. The AO noted that your record contains no evidence of a medical evacuation or a traumatic incident that would precipitate your repeated UA. There is insufficient post-service information to consider whether you may have incurred post-traumatic stress disorder (PTSD) or another unfitting mental health condition. The AO concluded by opining that there is insufficient evidence that you may have incurred PTSD or another unfitting mental health condition during your military service, and there is insufficient evidence that your misconduct could be mitigated by an unfitting mental health condition.

The Board carefully reviewed your application, weighed all potentially mitigating factors, and considered your contention that you were not diagnosed with PTSD, which caused your inability for you to complete your normal service. You further state that you were stationed in the mid-east (Bahrain), and this caused you to have a nervous breakdown; to this day, you have never been treated, and still suffer from your breakdown from your in-service. Unfortunately, after careful consideration of the AO and applying liberal consideration, the Board did not find an error or injustice that warrants upgrading your characterization of service or granting clemency in the form of an upgraded characterization of service.

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 contention as previously discussed and your desire to upgrade your discharge character of service. 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 your two NJPs, and subsequent separation at your request to avoid trial by court-martial, outweighed these mitigating factors. Accordingly, given the totality of the circumstances, the Board determined 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, _____
1/11/2022



Executive Director

