



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

█
Docket No: 4780-21
Ref: Signature Date



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 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 13 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, 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 also considered the advisory opinion (AO) furnished by qualified mental health provider, which was previously provided to Petitioner.

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.

You enlisted in the Navy and began a period of active duty on 18 April 1969. On 7 November 1969, you were convicted at a summary court-martial (SCM) of being in an unauthorized absence (UA) status lasting five (5) days until you were apprehended. You were sentenced to confinement at hard labor for 10 days and forfeitures of \$15.00 pay per month for one (1) month.

On 14 November 1969, an administrative remark in your record documents you were advised that you were being considered for an administrative discharge due to your multiple offenses. It further documents that failure to improve would result in you being processed for discharge. Not long after, on 26 November 1969, you received nonjudicial punishment (NJP) for another period of UA lasting two (2) days. Your service record documents you received a second NJP on 3 December 1969, although there was no further information available. On 18 March 1970, you were convicted at a special court-martial (SPCM) of being UA for 63 days, ending when you were apprehended. You were sentenced to confinement at hard labor for 45 days, forfeitures of \$80.00 pay per month for two (2) months, and to be reduced to E-1. On 29 June 1970, you were issued an additional administrative remark advising you that due to your frequent involvement of a disreputable nature you were again being considered for administrative discharge. You were further advised that your failure to show marked improvement would result in administrative discharge processing. Unfortunately, your misconduct continued and you were found guilty at a second SCM of a seven (7) day UA again ending when you were apprehended. You were sentenced to confinement at hard labor for 30 days and to forfeit \$75.00 pay per month for one (1) month. This was followed by your final NJP of 24 September 1970, for a two (2) day UA ending with your apprehension.

On 25 September 1970, you received correspondence from your commanding officer (CO) advising you that you were being recommended for discharge from the naval service by reason of unsuitability due to a severe emotionally unstable personality. Unfortunately, the documents related to your letter of notification and election of rights are not in your official military personnel file (OMPF). In this regard, 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.

On 8 October 1970, your CO recommended that you be discharged by reason of unsuitability. In his letter, your CO documented a request for an investigation was sent to the Naval Intelligence Service Resident Agent, U. S. Naval Station, █, due to your admitted drug use while being interviewed by a psychiatrist. On 16 November 1970, an endorsement from your commanding officer documents insufficient evidence of drug use as you declined to make a statement to the investigating agent. On 3 December 1970, the discharge authority directs you be discharged by reason of unsuitability and that the characterization of service you are to receive be the type warranted by your service record. On 4 December 1970, you are discharged by reason of unsuitability with a general (under honorable conditions) characterization of service.

As part of the Board's review, a qualified mental health professional reviewed your request for a discharge upgrade and provided the Board with an AO regarding your assertion that you were suffering from a mental health condition during your military service. The AO opined that based on current available evidence, there is in-service and post-service evidence that you were suffering from a mental health condition during your military service, and there is some evidence that your misconduct could be mitigated by a mental health condition.

On 17 November 2021, the Board received the additional documentation you submitted in response to the AO. You provided additional documentation from the Department of Veterans

Affairs Regional Office assigning you a 100 percent evaluation for service connected bipolar 1 disorder and anxiety 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 contentions noted above and your desire to upgrade your discharge. The Board further noted that you did not submit advocacy letters or post-service documents to be considered for clemency purposes. Based upon this review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board believed that considerable clemency was extended to you when you were awarded a general (under honorable conditions) characterization of service despite your multiple disciplinary infractions which resulted in your convictions at a SPCM, two (2) SCMs, and punishments you were awarded at two (2) NJPs. 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,

1/13/2022

█

Executive Director

Signed by: █