



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

■
Docket No: 6344-21
Ref: Signature Date



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 16 February 2022. 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 30 December 2021 and your rebuttal response to the AO. In response to the new supporting documentation, an additional AO was requested and received on 31 January 2022 that affirmed the previous AO.

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 21 June 1993. During the period from 14 September 1995 to 6 April 1996, you received three instances of non-judicial punishment (NJP). Your offenses were wrongfully using provoking speeches and gestures, dereliction of duty, violation of a lawful general regulation, and absence from your appointed place of duty.

On 6 April 1996, you were notified that you were being recommended for administrative discharge from the Navy by reason of misconduct due to commission of a serious offense and misconduct due to pattern of misconduct. You were advised of, and waived your procedural rights, to consult with military counsel and to present your case to an administrative discharge board (ADB). Your commanding officer (CO) then forwarded your administrative separation package to the separation authority (SA) recommending your administrative discharge from the Navy with an other than honorable (OTH) characterization of service. The SA approved the CO's recommendation and directed your OTH discharge from the Navy by reason of misconduct due to commission of a serious offense. On 14 May 1996, you were so discharged.

As part of the Board's review, a qualified mental health professional reviewed your request and provided the Board with an AO on 30 December 2021. The AO noted that your official military personnel file (OMPF) did not contain evidence of a diagnosis of a mental health condition or reported psychological symptoms/behavioral changes indicative of a diagnosable unfitting mental health condition. In contrast, the evidence that you submitted confirmed a post-discharge diagnoses of Intermittent Explosive Disorder and Bipolar Disorder. There was no evidence presented that indicated your experience of life stressors was extraordinary or unique or that you met the diagnostic criteria for a mental health condition during your military service. The AO concluded by opining that the objective evidence failed to establish you suffered from a mental health condition at the time of your military service or your in-service misconduct could be mitigated by a mental health condition.

In response to your submission of new supporting documentation, the mental health professional reviewed your request and provided the Board with an additional AO on 31 January 2022. The AO noted your additional rebuttal evidence, to include the clinical psychologist remarks and your new personal statement. The AO acknowledged that the additional information submitted does provide new information. However, after further review, the AO concluded that even though you presented evidence of a post-discharge diagnosis, the preponderance of available evidence fails to establish that your in-service misconduct was mitigated by a mental health condition. Additionally, there is insufficient objective evidence to establish an association between your behaviors with your contended traumatic stressors or to determine possible mitigation of your in-service misconduct.

The Board carefully reviewed your application, weighed all potentially mitigating factors, and considered your contentions that: 1) the incidents that led to your discharge were related to a mental health disorder and self-medicating with alcohol that lead to poor judgement calls by a mentally ill youth; 2) you feel that if treatment for the alcohol abuse and mental health issues would have been offered by your command the likely hood of you receiving an OTH discharge would have diminished; 3) it is an injustice, since you were never offered any type of counseling or treatment; 4) the stressors of the overseas deployments worsened the depression symptoms of

the Bipolar disorder you were diagnosed with; 5) you feel that your condition worsened after a second overseas deployment, falling from a ladder, and being involved in a car accident while you were in-service; 6) you had good intentions to serve your country, but could not control having a mental illness that was aggravated while in-service; 7) pre-service you had no signs of this mental health condition and did not suffer from depression; and 8) it has taken you years of post-service therapy and medication to get your life under control again. In addition, the Board considered your allegations of Military Sexual Trauma and mistreatment by your chain of command. Unfortunately, after careful consideration of both advisory opinions, your submission of supporting documentation 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 contentions 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 the seriousness of your misconduct outweighed these mitigating factors. In making this finding, the Board concurred with the AOs and took into consideration the lack of any mental health symptoms at the time of your discharge from the Navy when weighing the mitigation evidence in your case against your misconduct. In regard to your contention concerning alcohol treatment, regulatory guidelines state a command is under no obligation to send a servicemember to alcohol rehabilitation treatment unless it was determined, by competent medical authority, that the servicemember is alcohol dependent. There is no documentation in the record that shows you were diagnosed as being alcohol dependent. 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,

3/2/2022

█
Executive Director

Signed by: █