



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: 7096-21
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 limitation 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 March 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 24 January 2022, which was previously provided to you.

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 26 April 1978. On 15 December 1978, you received non-judicial punishment (NJP) for an unauthorized absence. On 20 March 1979, you were convicted by a summary court-martial (SCM) of an unauthorized

absence totaling 42 days. On 19 April 1979, you received your second NJP for an unauthorized absence totaling 14 days. On 20 April 1979, you were notified that you were being recommended for administrative discharge from the Navy by reason of misconduct due to frequent involvement of a discreditable nature with military authorities. You were advised of, and elected your procedural right to consult with military counsel and to present your case to an administrative discharge board (ADB). After consultation with military counsel, you signed a conditional agreement between yourself and the commanding officer (CO) agreeing to waive your right to present your case to an ADB provided that you were recommended for a general (under honorable conditions) discharge. Your CO recommended that you be administratively separated from the naval service with a general (under honorable conditions) characterization of service. The separation authority concurred with your CO and approved and directed your general (under honorable conditions) characterization of service discharge. On 24 April 1979, 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 24 January 2022. The AO noted that in service, you were diagnosed with bed-wetting that existed prior to entry into service. Unfortunately, you have not provided any post-service medical evidence in support of your claims of mental health issues. Additionally, your statement does not provide sufficient detail to determine a nexus between a mental health conduct and your misconduct. Additional records are required to render an alternate opinion. The AO concluded by opining that there is insufficient evidence that you may have incurred an unfitting mental health condition during military service or that your misconduct could be attributed to an unfitting mental health condition.

The Board carefully reviewed your application, weighed all potentially mitigating factors, and considered your contention that you were suffering from alcoholism and other mental health issues. Unfortunately, the Board, applying liberal consideration, relying on the AO, and noting you did not submit any documentation regarding your mental health condition, did not find evidence of 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 desire to upgrade your discharge character of service and contention as previously discussed. For purposes of clemency consideration, the Board noted you did not provide a statement or supporting documentation describing post-service accomplishments, or advocacy letters.

Based upon this review, the Board concluded your potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your two NJPs and SCM conviction, outweighed these mitigating factors. In making this finding, the Board considered the brevity of your service during which you committed these multiple offenses and the nature of the offenses. When weighing the evidence, the Board concluded the assigned characterization of service remains appropriate since negative aspects of your conduct outweighed the positive aspects of your service. 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,

3/28/2022

