



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: 7944-21
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 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 21 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, 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). Additionally, the Board considered the advisory opinion (AO) furnished by qualified mental health provider which was previously provided to you. Although you were afforded an opportunity to submit a rebuttal, you did not do so.

You enlisted in the U. S. Navy (USN) and began a period of active duty on 21 April 1986. On 2 May 1986, your official military personnel file (OMPF) documents you were diagnosed with a back strain and placed on bed rest for five days. On 12 May 1986, you were diagnosed with an ankle sprain which occurred on 10 May 1986 and, on 15 May 1986, you were diagnosed with a fibula fracture. On 16 May 1986, you were provided a referral to be placed on medical hold due to your ankle injury but requested to return to full duty. On 20 May 1986, you commenced a

period of unauthorized absence (UA) which lasted for 738 days until you were apprehended on 27 May 1988.

Unfortunately, the documents related to your administrative separation 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.

Your Certificate of Release or Discharge from Active Duty (DD Form 214), reveals that you were separated from the Navy on 5 August 1988 with an other than honorable (OTH) characterization of service, your narrative reason for separation is "Separation in Lieu of Trial by Court-Martial," your separation code is "KFS," and your reenlistment code is "RE-4."

As part of the Board's review, a qualified mental health professional reviewed your request for correction to your record and provided the Board with an AO regarding your incurred an ankle injury during your initial training, which limited your performance and angered your fellow recruits who physically and sexually assaulted you, leading to your decision to go UA. The AO notes; (1) you were diagnosed with malingering, substance abuse disorder, and possible personality disorder, indicating military service was not suitable to you, (2) post-service you have been diagnosed with PTSD, which your clinician determined was service-related due to harassment and assault incurred on active duty, and (3) there are unfortunate discrepancies between your service record and your statement that make it difficult to determine the reliability of your report. The AO opined, based on the available evidence, there is some post-service evidence that you may have incurred PTSD during military service as well as to indicate behavior associated with victims of MST, but there is insufficient evidence that your experience of MST contributed to the circumstances resulting in your separation.

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, change your separation reason to "conditions, not disability," and your contentions noted above. The Board viewed your allegations with serious concerns. However, this Board is not an investigating agency nor does it have the resources to investigate unsubstantiated allegations. Based upon this review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined your misconduct, as evidenced by your long-term UA, outweighed these mitigating factors. Additionally, the Board concurred with the AO and determined that the preponderance of the evidence does not support a finding that you misconduct could be attributed to MST due to the conflict nature of the evidence you presented. As a result, the Board determined your conduct was a serious departure from that expected of a Sailor and warrants an OTH characterization of service. The Board also concluded that you already received considerable mitigation due to the Navy's decision to administratively separate you in lieu of trial by court-martial. By granting your request to avoid trial, more likely than not, you avoid a punitive discharge and other associated punishments from your lengthy UA. Further, the Board found no basis to change your narrative reason for separation to "condition not a disability" based on evidence you were administratively separated for misconduct associated

with your UA. The Board noted that your misconduct processing would have superseded any other basis for separation. 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 the 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,

4/5/2022

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Executive Director

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