



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: 0009-22

Ref: Signature Date

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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 Board waived the statute of limitation 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 28 January 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 the 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 to 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 the advisory opinion (AO) furnished by a 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.

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 service on 14 January 2004. Prior to completing your first year of service, you received nonjudicial punishment (NJP) on 10 December 2004 for violations of Article 89, disrespect to an officer, after failing to salute, using

a disrespectful tone, and displaying lackadaisical bearing. You were counseled on retention with warnings regarding potential separation if you committed further misconduct. Following multiple instances of misconduct spanning 1 February 2006 through 17 February 2006, you received a second NJP on 23 February 2006 for five specifications of violations of Article 86, unauthorized absence, three specifications of violations of Article 92, failure to obey a lawful order, following which you were notified of administrative separation for a pattern of misconduct with the lowest potential characterization of service as General (Under Honorable Conditions). You waived applicable rights and were separated the following day on 24 February 2006 with a General (Under Honorable Conditions) discharge.

The Board carefully considered all potentially mitigating factors to determine whether the interests of justice warranted relief in your case in accordance with the Wilkie memo. These included, but not limited to, your contention that your discharge was inequitable because you suffered from a mental health (MH) condition or post-traumatic stress disorder (PTSD) connected to events in-service which included a violent assault by a shipmate and another sailor which left your eye swollen shut. In addition, you assert that you suffered injuries from a vehicle accident. You claim that these experiences were exacerbated when your command did not permit you reprieve to recover from your injuries on either occasion. You submit that the Command's actions may have been racially motivated. As a result, you contend that you began drinking to self-medicate the pain from your injuries and to alleviate the fear and anxiety of your traumatic experiences, which led to you receiving two in-service offenses for driving under the influence and alcohol rehabilitation treatment. The Board also considered the character letters you submitted as post-service evidence of clemency.

Because you contend a mitigating MH condition, the Board considered the AO, which reviewed the available in-service and post-service medical records and identified that you have a post-service diagnosis of PTSD which the Department of Veteran's Administration has determined to be connected to your military service. The AO assessed that the misuse of alcohol to self-medicate may have contributed to your work-performance misconduct of your second NJP and, as a result of exhibiting behaviors associated with PTSD during your military service, that your PTSD may have mitigated some of your in-service misconduct; however, the AO identified that it would not have mitigated the misconduct which preceded your traumatic experiences.

With respect to your contentions of developing an alcohol use disorder after experiencing in-service trauma and not being afforded sufficient opportunity to recover, although your service record contains no documentation that your misconduct was related to alcohol use, the Board concurred with the AO and determined that the behaviors associated with the misconduct of your second NJP may have resulted from a mitigating MH condition. However, the Board also concurred with the AO in that your MH condition would not have mitigated the misconduct which predated your traumatic experiences. With respect to your contention of unfairness in your characterization of service, the Board assessed that the scope and severity of your in-service misconduct would normally merit an other than honorable discharge; however, the Board noted that you received a characterization of General (Under Honorable Conditions) discharge. Based upon its review, the Board determined that your General (Under Honorable Conditions) discharge has already accounted for the mitigating nature of the traumatic experiences which occurred between your first and second NJPs and, as a result, concluded the potentially

mitigating factors you submitted were insufficient to warrant relief. Specifically, the Board determined that your misconduct, evidenced by your first NJP for violations of Article 89, outweighed the mitigating in-service and post-service factors you submitted for consideration due to the seriousness of your misconduct. Further, the Board concluded your narrative reason for separation was supported by your pattern of misconduct, which was not excused by your mental health condition. Accordingly, 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 is attached 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,

2/16/2022

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Executive Director

Signed by: █