



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: 142-22
4241-18
592-16
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 29 April 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 the advisory opinion (AO) furnished by a qualified mental health provider, which was previously provided to you. Although you were afforded the opportunity to submit a rebuttal, you did not do so.

You enlisted and began a period of active duty in the Navy on 11 December 1990. On 28 February 1992, you received nonjudicial punishment (NJP) for disorderly conduct and damaging government property in violation of Articles 134 and 108, Uniform Code of Military Justice (UCMJ). Your second NJP occurred, on 17 April 1992, for being drunk and disorderly, assaulting a petty officer in the face, and disobeying a lawful order not to consume alcohol in violation of Articles 134, 128, and 92, UCMJ. On 21 April 1992, you were notified of administrative separation processing by reason

of misconduct due to commission of a serious offense. You consulted with counsel and waived an administrative discharge board. On 25 July 1992, you were arrested by civilian police and charged with being drunk in public. Your third NJP occurred, on 31 July 1992, for violation of two specifications of Article 134, disorderly conduct and drinking underage. On 16 September 1992, you were discharged with an Other Than Honorable (OTH) characterization of service. You were previously denied relief by this Board on 20 September 2016 and 15 August 2019.

You contend that that a certified “Criminal Record Check” addresses your involvement with civilian authorities at the time of active duty and reflects “No Arrest Data” and, therefore, this new evidence contradicts charges of misconduct that the Navy states you committed on 25 July 1992. You further contend there is no evidence to support you destroyed government property based on the definition of “damage,” meaning “any change in the condition of the property which impairs its operational readiness.” You state prior to your misconduct you served on board the ██████████ during the Gulf War, within Desert Storm, and participated in military operations where you received hostile fire pay. You state it is reasonable to believe this encounter initiated your PTSD and contributed to behavioral changes. You contend that, on 16 April 1992, you were struck in the face by a higher ranking service member without provocation, and this event may have contributed to or aggravated your PTSD. You state you were later thrown into a van and the service member raised his hand as though he was going to strike you again. You state you received intensive counseling while in correctional custody. You further state the commanding officer’s discharge recommendation identifies or describes a change in behavior that supports your inability to conform your behavior to the expectations of a military environment. You contend you were discharged without a psychologist or psychiatrist mental exam. You further contend a Department of the Navy Freedom of Information Act request indicates correctional custody unit treatment records were destroyed to the detriment of your case. Additionally, you requested liberal consideration in accordance with policy memoranda. The Board noted that you submitted documentary evidence in support of clemency consideration.

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 desire to upgrade your discharge. The Board applied liberal consideration in accordance with policy memoranda and also relied on the AO dated 24 January 2022 in making its determination. The AO noted in pertinent part:

In service, the Petitioner was diagnosed with an alcohol use disorder. Post service, he has provided evidence of a diagnosis of PTSD which has been attributed to military service. Unfortunately, there is insufficient evidence to establish a clear nexus with his misconduct. The provided medical record attributed his trauma to Gulf War exposure with no additional detail. The Petitioner attributed his purported trauma to incidents incurred during correctional custody and an unprovoked assault upon his person on 12 April 1992. However, statements from the April 1992 incident indicate that the Petitioner was belligerent with other civilians in addition to the Sailor involved in the altercation, which behavior seems more consistent with alcohol use disorder than unrecognized symptoms of

PTSD. Additional records (e.g., complete post-service mental health records listing the Petitioner's diagnoses, symptoms, onset, and their specific link to his misconduct) are required to clarify these discrepancies.

The AO concluded, “[b]ased on the available evidence, it is my medical opinion that there is insufficient evidence that the Petitioner incurred PTSD or another unfitting mental health condition during military service. There is insufficient evidence that his misconduct could be attributed to PTSD or another mental health condition.”

Based upon this review, the Board concluded that the potentially mitigating factors in your case were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your three NJPs, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and determined it showed a complete disregard for military authority and regulations. Further, the Board did not find your arguments persuasive in light of the documented evidence of misconduct in your record. Finally, the Board concurred with the AO that there was insufficient evidence that your misconduct could be attributed to a mental health condition. As a result, the Board concluded your conduct constituted a significant departure from that expected of a Sailor and continues to warrant an OTH characterization. After applying liberal consideration, the Board did not find evidence of an error or injustice that warrants upgrading your characterization of service, restoring your rank to E4, or changing your reentry code. Further, the Board concluded clemency was inappropriate in your case based on your extensive misconduct and the findings of the AO. Accordingly, given the totality of the circumstances, the Board determined that your request does not merit relief.

Regarding your request to change your entry date to 17 November 1990, your record indicates you signed preservice documentation on 17 November 1990 but commenced active duty on 11 December 1990. Therefore, the Board found insufficient evidence to grant the relief requested.

Regarding the awards portion of your request, you must exhaust all administrative remedies available under existing law and regulations within the Department of the Navy prior to requesting relief from the Board. Please contact Navy Personnel Command to request a change to your awards record. Should you feel that your record still contains an error after your request to the Navy, you may reapply to this Board with evidence that an error exists.

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

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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,

5/16/2022

[REDACTED]

Executive Director

[REDACTED]