



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: 1061-22
Ref: Signature Date

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Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to 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 13 June 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 and the documents you submitted in rebuttal.

You enlisted and began a period of active duty in the Navy on 18 February 1986. On 19 October 1986, you received nonjudicial punishment (NJP) for a three day unauthorized absence (UA) and ten specifications of failure to obey a lawful order between 6 October 1986 and 15 October 1986. These offenses were in violation of Articles 86 and 92, Uniform Code of Military Justice (UCMJ). You entered a period of UA, from 1 November 1986 to 18 November 1986, for a total of 17 days. On 30 January 1987, you were convicted by Special Court Martial (SPCM) of UA, missing ship's movement, incapacitation of duties as a result of wrongful previous overindulgence in intoxicating liquor, and disobeying a lawful order in violation of Articles 86, 87, 92, and 134, UCMJ. You were sentenced to confinement at hard labor for 31 days, forfeiture of \$250 pay per month for two months, and reduction in rank to the pay grade E-2. On 25 March 1987, you were notified of

administrative separation processing by reason of misconduct due to commission of a serious offense. You elected not to consult with counsel, and waived all of your procedural rights to include requesting an administrative discharge board (ADB). On 8 May 1987, you were discharged with an Other Than Honorable (OTH) characterization of service.

On 1 March 2001, the Naval Discharge Review Board conducted a review of your record based on your request for a discharge upgrade. Your discharge was determined to be proper as issued with not change warranted.

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 and contention that during your service you experienced several incidents that caused you to develop PTSD and this condition contributed to your misconduct, that you were injured and should have had surgery on your thumb but your Lieutenant warned you that the ship's doctor was incompetent and liked to experiment with amputations and other techniques on young Sailors, that your mother became severely ill and had a short time to live and when you requested leave to see her your chain of command responded with abuse, derision, and arbitrary denials, that you entered into a UA status to see your mother, and that you were prejudiced by due process violations because you were not advised of your right to request an ADB and that your post-service conduct warrants clemency. For purposes of clemency consideration, the Board noted you provided supporting documentation describing post-service accomplishments and advocacy letters.

The Board also relied on the AO in making its determination. The AO stated in pertinent part:

There is no evidence that the Petitioner was diagnosed with a mental health condition during military service. Throughout his disciplinary processing, there were no concerns raised of a mental health condition that would have warranted a referral for evaluation. Post-service, a civilian psychologist has determined that he meets criteria for PTSD attributed to military service. Unfortunately, the medical evidence and his statement are not sufficiently detailed to establish a nexus with his misconduct. While military service and a terminally ill parent are both stressful events, it is not clear how the events meet the criteria of a purported trauma, given the available information. Additionally, it is not clear that the Petitioner's in-service alcohol use could be attributed to PTSD symptoms, given his pre-service history of problematic use. Although UA could be considered to be a symptom of PTSD avoidance, the timeline for his UA seems unusual, given his mother's death did not occur until after his separation from service. Additional information is required regarding the Petitioner's repeated disobedience to attribute it to PTSD irritability. Additional records (e.g., post-service mental health records describing the Petitioner's diagnosis, symptoms, 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 clinical opinion that there is some post-service evidence that the Petitioner may have incurred PTSD during military service. There is insufficient evidence that his misconduct could be attributed to PTSD.”

In response to the AO, you provided an updated report of a psychological evaluation from a civilian psychologist along with additional session notes.

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 NJP and SPCM, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the apparent disregard it showed for military authority and regulations. Further, the Board considered the likely negative impact your misconduct had on the good order and discipline of your command. 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. While the Board commends your post-discharge good character, after applying liberal consideration, the Board 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. 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,

7/1/2022

[REDACTED]

Executive Director

Signed by: [REDACTED]