



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
701 S. COURTHOUSE ROAD, SUITE 1001
ARLINGTON, VA 22204-2490

Docket No: 1150-22
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 10 August 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 28 June 2022. Although you were provided an opportunity to comment on the AO, you chose not to do so.

You entered active duty with the Navy on 21 February 1985. On 7 October 1987, you were in an unauthorized absence (UA) status for two hours and twenty minutes. On 29 October 1987, you submitted a written request for discharge for the good of the service (GOS) to avoid trial by court-martial due to an attempt to escape custody, three specifications of failing to go at time prescribed to appointed place of duty, two specification of absence from appointed place of duty, disrespect in language and deportment toward a commissioned officer, three specifications of insubordinate conduct, damaging government property, wrongfully using provoking words, and three specifications of drunk and disorderly conduct. Prior to submitting this request, you conferred with a qualified military lawyer, at which time you were advised of your rights and

warned of the probable adverse consequences of accepting such a discharge. Your request was granted and your commanding officer (CO) was directed to issue an Other Than Honorable (OTH) discharge for the good of the service. On 29 January 1988, you were so discharged.

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 you developed a mental health condition (MHC) during your military service that wasn't "looked into properly." For purposes of clemency consideration, the Board noted you did not provide supporting documentation describing post-service accomplishments, or advocacy letters.

As part of the Board's review, a qualified mental health professional reviewed your request and provided the Board with an AO on 28 June 2022. The AO stated in pertinent part:

That during military service, the Petitioner was diagnosed with a personality disorder and an alcohol use disorder (AUD). Problematic alcohol use is incompatible with military readiness and discipline, and there is no evidence he was unaware of his misconduct or not responsible for his behavior. A personality disorder indicates characterological traits rendering military service unsuitable and, by definition, is neither incurred in nor exacerbated by military service. The Petitioner has provided no medical evidence to support another mental health condition, and his personal statement is not sufficiently detailed to establish clinical symptoms of an alternate condition. Additional records (e.g., mental health records describing the Petitioner's diagnosis, symptoms, and their specific link to his misconduct) would aid in rendering an alternate opinion.

The AO concluded, "[b]ased on the available evidence, it is my considered clinical opinion there is insufficient evidence of a mental health condition that may be attributed to military service, other than AUD. There is insufficient evidence his misconduct could be attributed to a mental health condition other than AUD or personality disorder."

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 request to be discharged for the GOS, outweighed the potential mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the likely negative effect it had on the good order and discipline of your command. Additionally, the Board concurred with the AO that there is insufficient evidence that your misconduct could be attributed to PTSD or another mental health condition. Finally, the Board considered that you already received a large measure of clemency when the Navy agreed to discharge you for the GOS; thereby sparing you from the stigma of a court-martial conviction and a likely punitive discharge. As a result, the Board concluded your conduct was a significant departure from that expected from a Sailor and your OTH discharge remains appropriate. 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 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,

8/16/2022

