



Docket No: 1455-22
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 limitations 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 July 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 16 May 2022. Although you were provided an opportunity to comment on the AO, 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 entered active duty with the Navy on 23 June 1989. According to the information in your record, you were in an unauthorized absence (UA) status from 15 February 1990 to 19 February 1990. On 18 January 1991, you received non-judicial punishment (NJP) for failure to go to appointed place of duty. Your punishment was forfeiture of pay and reduction to E-1 (suspended for six months). On 5 March 1991, your reduction to E-1 suspension was vacated due to continued misconduct.

On 12 June 1991, a special court-martial (SPCM) convicted you of two specification of UA totaling 89 days and wrongful use of marijuana. You were sentenced to forfeiture of pay, confinement for 60 days, and a Bad Conduct Discharge (BCD). After the BCD was approved at all levels of review, on 13 November 1992, 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. In addition, the Board considered your contentions that you were mistreated, that you incurred a Mental Health Condition (MHC) during military service, which might have mitigated your discharge character of service, and struggled with personal stressors due to ill family members. 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 16 May 2022. The AO stated in pertinent part:

That during military service, Petitioner was diagnosed with a personality disorder. This diagnosis was based on observed behaviors and performance during his period of service, the information he chose to disclose, and the psychological evaluation performed in the emergency room setting. A personality disorder diagnosis by definition is pre-existing to military service and indicates lifelong characterological traits unsuitable for military service since they are not typically amenable to treatment within the operational requirements of Naval Service. Unfortunately, he has provided no medical evidence to support his claims of another mental health condition incurred in or exacerbated by military service. Additional records (e.g., post service mental health records describing the Petitioner's diagnosis, symptoms, and their specific link to your misconduct) would aid in rendering an alternate opinion.

The AO concluded, "[b]ased on the available evidence, it is my clinical opinion that there is insufficient evidence of a diagnosis of a MHC that may be attributed to military service. There is insufficient evidence that your misconduct may be attributed to a MHC."

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 NJP and SPCM conviction, outweighed the potential mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact it included a drug offense. Further, the Board considered the fact your command gave you several opportunities to correct your conduct deficiencies before you were ultimately discharged for misconduct. The Board also noted that there is no evidence in your record, and you submitted none, to support the allegation you were suffering from personal stressors due to ill family members. Finally, the Board concurred with the AO that there is insufficient evidence that your misconduct could be attributed to a MHC. As a result, the Board concluded your conduct constituted a significant departure from that expected of a Sailor and continues to warrant a BCD. 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 your case. 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,

7/19/2022

