



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

■
Docket No: 1492-22
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 15 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 professional dated 25 April 2022 and your response to the AO.

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 duty on 21 February 1989. On 2 November 1989, you received non-judicial punishment (NJP) for an unauthorized absence (UA) totaling 29 days and failure to obey a lawful order. The record shows that on 16 March

1990, you commenced a period of UA that subsequently concluded upon your apprehension by civilian authorities and return to military authorities on 21 May 1990, totaling 65 days. Unfortunately, the documents pertinent to your administrative separation are not in your official military personnel file (OMPF). Notwithstanding, the Board relies on a presumption of regularity to support the official actions of public officers and, in the absence of substantial evidence to the contrary will presume that they have properly discharged their official duties.

Based on the information contained on your Certificate of Release or Discharge from Active Duty (DD Form 214), it appears that you submitted a voluntary written request for an Other Than Honorable (OTH) discharge for separation in lieu of trial by court-martial. In the absence of evidence to contrary, it is presumed that prior to submitting this voluntary discharge request, you would have conferred with a qualified military lawyer, been advised of your rights, and warned of the probable adverse consequences of accepting such a discharge. As part of this discharge request, you would have acknowledged that your characterization of service upon discharge would be an OTH. On 13 July 1990, you were discharged from the Navy with an OTH characterization of service by reason of “Separation In Lieu of Trial by Court-martial.”

As part of the Board’s review, a qualified mental health professional reviewed your request and provided the Board with an AO on 25 April 2022. The AO stated in pertinent part:

During his military service, he was diagnosed with an adjustment disorder and a personality disorder, indicating difficulty with military service as well as lifelong characterological features which rendered military service unsuitable. Unfortunately, he has provided no post-service medical records in support of his claims. His personal statement is not sufficiently detailed to establish a nexus with his misconduct. While UA could be related to difficulty adjusting to military life, there is insufficient information regarding his misconduct to attribute it to a mental health condition. Additionally, it is difficult to consider how failure to submit a financial assessment could be attributed to a mental health condition. Additional records (e.g., medical records describing the Petitioner’s diagnosis, symptoms, and a specific link to his misconduct) are required to render an alternate opinion.

The AO concluded, “[b]ased on the available evidence, it is my clinical opinion that there is evidence of a mental health condition that may be attributed to military service (Adjustment Disorder). There is insufficient evidence that his misconduct could be attributed to a mental health condition.” You provided a response to the AO that supplied additional clarification of the circumstances of your case including medical documents.

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 submission of supporting documentation, your desire to upgrade your discharge character of service and contention that while serving on active duty you suffered from chronic mental health issues and did not receive the proper care and evaluation. For purposes of clemency consideration, the Board noted you did not provide supporting documentation describing post-service accomplishments, or advocacy letters.

Based upon this review, the Board concluded your potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your NJP and subsequent separation at your request, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and concluded that it showed a complete disregard of military authority and regulations. Additionally, the Board noted you received significant mitigation from being allowed to separate with an OTH character of service instead of risking greater punishment at a court-martial. Based on the Navy's decision to administratively separate you in lieu of court-martial, the Board concluded you already received significant clemency. Finally, the Board concurred with the AO and determined that there is insufficient evidence that your misconduct could be attributed to a mental health condition. As a result, the Board determined 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 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,

7/5/2022

█

Executive Director

█