



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: 1561-22
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 25 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). As part of the Board's review, a qualified mental health professional reviewed your request and provided the Board with an Advisory Opinion (AO) on 25 May 2022. You were provided an opportunity to respond to the AO, but chose not to do so.

You enlisted in the Navy and began a period of active duty on 5 September 1986. During your enlistment processing you disclosed having used marijuana. On 15 April 1989, you received your first nonjudicial punishment (NJP) for conspiring with threats to commit larceny of long distance telephone services, obtaining long distance telephone services under false pretenses, and receiving stolen property. You were counseled afterwards and warned that you were being retained in the naval service and further deficiencies and/or misconduct could result in administrative separation under Other Than Honorable (OTH) conditions. On 3 May 1989, you

were found guilty at a summary court-martial (SCM) of larceny of a telephone card and false official statement. You were sentenced to be reduced in rank to E-2 and to forfeit \$552.00 pay per month for one month. On 25 October 1989, you received a second NJP for wrongfully and falsely altering a military identification card.

On 7 November 1989, you were notified of administrative separation processing for misconduct by reason of commission of a serious offense (COSO), at which time you waived your rights to consult with counsel and have your case heard before an administrative discharge board. On 22 November 1989, your CO recommended your discharge with an OTH. On 30 November 1989, the separation authority approved your separation and directed you be discharged with an OTH by reason of COSO. On 13 December 1989, you were so discharged.

Post-discharge, you petitioned the Naval Discharge Review Board (NDRB) for an upgrade of your discharge to honorable conditions. On 14 November 1991, the NDRB found no impropriety or inequity in the discharge and determined your discharge character and reason should not be changed.

In 2016 and 2018, you completed drug and alcohol rehabilitation treatment with the Salvation Army Rehabilitation Center. As of 1 February 2022, you were a member in good standing with the program.

The Board carefully considered all potentially mitigating factors in your petition 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 incurred PTSD and other mental health conditions (MHCs) during military service, which might have mitigated your characterization and your desire to obtain treatment. For purposes of clemency consideration, the Board noted, other than your rehabilitation treatment, you did not provide supporting documentation describing post-service accomplishments, or advocacy letters.

Based on your assertion that you suffered from PTSD and other mental health conditions during military service, a qualified mental health professional reviewed your request for correction to your record and provided the Board with the AO. The AO states in pertinent part:

There is no evidence that he was diagnosed with a mental health condition in military service, or that he exhibited any psychological symptoms or behavioral changes indicative of a diagnosable mental health condition. Throughout his disciplinary processing, there were no concerns raised of a mental health condition that would have warranted a referral for evaluation. He has provided no medical evidence in support of his claims, although he has provided evidence of treatment for alcohol use disorder that is temporally remote to his military service and does not appear to be related to his military service. Unfortunately, the Petitioner's personal statement is not sufficiently detailed to establish a clinical diagnosis or provide a nexus with his misconduct. Additional records (e.g., post-service 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 clinical opinion that there is insufficient evidence of a diagnosis of PTSD or another mental health condition that may be attributed to 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 these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your NJPs and SCM, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and found that your conduct showed complete disregard for military authority and regulations. Additionally, the Board also noted the nature of your misconduct that included dishonesty and multiple incidents of theft. Further, the Board considered that the Navy gave you multiple opportunities to correct your behavior and you continued to commit the same types of offenses. Finally, the Board concurred with the AO that there is insufficient evidence that your misconduct could be attributed to PTSD or another 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. While the Board commends your post-discharge completion of rehabilitation treatment, 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,

8/8/2022

