



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: 1663-22
Ref: Signature Date

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Dear ■

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 27 April 2022, and your response to the AO.

You enlisted in the Navy and began a period of active duty on 27 January 2003. On 16 May 2003, you were issued an administrative remarks (Page 11) counseling concerning deficiencies in your performance and conduct, specifically, your lack of military bearing, failure to comply with AM-A1 school standards, unauthorized absence, failure to complete homework, and your complete disregard for rules and regulations. On 16 March 2004, you received non-judicial punishment (NJP) for malingering. On 17 March 2004, you were notified that you were being recommended for administrative discharge from the Navy by reason of misconduct due to commission of a serious offense. You were advised of, and waived your procedural rights to consult with military counsel and to present your case to an administrative discharge board

(ADB). Your commanding officer (CO) then forwarded your administrative separation package to the separation authority (SA) recommending your administrative discharge from the Navy with an Other Than Honorable (OTH) characterization of service. The SA approved and directed your OTH discharge from the Navy. On 30 April 2004, you were discharged from the Navy with an OTH characterization of service by reason of misconduct due to commission of a serious offense.

As part of the Board's review, a qualified mental health professional reviewed your request and provided the Board with an AO on 27 April 2022. The AO noted in pertinent part:

Among available records, there is no evidence of a mental health diagnosis in military service. Throughout his disciplinary processing, there were no concerns raised of a mental health condition that would have warranted a referral for evaluation. Unfortunately, he has provided no medical evidence in support of his claims. Additional records (e.g., medical records describing the Petitioner's diagnosis and symptoms in service, or records detailing 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 mental health condition that may be attributed to military service. There is insufficient evidence that his misconduct could be attributed to a mental health condition."

In response to the AO, you provided a statement in which you argued that you were seeing a psychologist for several months during your service.

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 character of service and contention that you did not receive the proper mental health help you were guaranteed during your active duty service. 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 administrative counseling and NJP, outweighed these mitigating factors. In making this finding, the Board considered the brevity of your service, the nature of your administrative counseling, and the seriousness of the offense you committed. In addition, the Board concurred with the AO and determined that there is insufficient evidence that your misconduct could be attributed to a mental health condition. The Board was not persuaded by your argument that you did not receive proper mental health assistance and noted you did not provide any evidence to substantiate your argument. Therefore, after weighing the evidence, the Board concluded your conduct was a significant departure from that expected from a Sailor and still warrants an OTH characterization of service. 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

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Executive Director

Signed by: █