



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: 1665-22
Ref: Signature Date



Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to Title 10, United States Code, Section 1552. 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 Board waived the statute of limitation 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 17 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 the 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 to 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) of a qualified mental health provider, which was previously provided to you. You were afforded an opportunity to submit a rebuttal, which was received on 24 May 2022.

You enlisted in the Navy and began a period of active service on 9 December 1999. 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 20 February 2001, you were discharged from the Navy with an OTH characterization of service by reason of “In Lieu of Trial by Court-martial.”

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 so that you may qualify for benefits. The Board also considered your contentions that you were constantly screamed at, harassed, hazed, and called names by coworkers who were jealous of the rank you attained through college credits. The Board noted that you described that they would vandalize your property to sabotage you during inspections, steal your belongings, and wake you in the middle of the night by pouring water on you, which caused you to develop nightmares. Additionally, the Board acknowledged your description of some of the possible charges against you as being absent without leave, disregarding orders, assaulting a petty officer while being held in the ship’s brig, and “a few other made up charges” of which you claim you were unjustly accused but were too young and naïve to properly address at the time of your discharge. For purposes of clemency consideration, the Board noted you provided evidence of completing a college degree but no advocacy letters.

Because you contend a mental health condition, the Board also considered the AO, which noted in pertinent part:

The Petitioner’s military personnel file is incomplete and there is no record of the charges that were referred to court martial. Among available records, there is no evidence that he was diagnosed with a mental health condition 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. Post-service, civilian providers have diagnosed him with bipolar disorder that they consider began during military service. However, his post-service diagnosis of PTSD is temporally remote from military service and appears to be related to post-service trauma. Unfortunately, the lack of information regarding his in-service misconduct makes it difficult to establish a nexus with a mental health condition (bipolar disorder). Additional records (e.g., service medical records describing the Petitioner’s diagnosis and symptoms in service, or records detailing his misconduct) are required to render an opinion.

The AO concluded, “[b]ased on the available evidence, it is my clinical opinion that there is post-service evidence of a mental health condition (bipolar disorder) that could 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 additional medical records and a statement clarifying the circumstances of your case.

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 separation in lieu of court-martial, outweighed these mitigating factors. In

making this finding, the Board considered the likely seriousness of your misconduct that would have necessitated your request to be discharged. Further, the Board considered that you already received significant clemency in your case when the Navy chose to administratively separate you in lieu of a court-martial. Finally, the Board concurred with the AO that there is insufficient evidence that your misconduct could be attributed to a 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 characterization. While the Board commends your post-discharge academic accomplishments, 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 the 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 is attached 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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