



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: 1787-22

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.

A three-member panel of the Board, sitting in executive session, considered your application on 17 May 2022. The names and votes of the members of the panel 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 25 August 2017 guidance from the Office of the Under Secretary of Defense for Personnel and Readiness (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), and the 17 March 2022, advisory opinion (AO) provided by a Licensed Clinical Psychologist. The AO was provided to you on 17 March 2022, and you were given 30 days in which to submit a response to the AO. Although you were afforded an opportunity to submit a rebuttal, you did not do so.

Regarding your request for a personal appearance, the Board determined that a personal appearance with or without counsel will 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.

The Board carefully considered your request for retention in the Navy or a reduction in the punishment you were awarded during your 7 January 2022 non-judicial punishment (NJP). The Board considered your contention that your punishment was unjust, misconduct and unprofessionalism on many levels and occasions was swept under the rug or taught as a learning experience, and you were not given the same treatment. You claim that your division has always had issues with professionalism and respect, and during the deployment you were called inappropriate names referencing your Italian ethnicity. You argue that you were not solely at fault. You acknowledged that the name you called another Sailor was unacceptable, and you acknowledged your part in making your coworkers uncomfortable and the unprofessionalism in the division. You also provided a statement, in which you addressed interactions with several Sailors and things you witnessed during the deployment. For purposes of clemency consideration, the Board noted you did not provide supporting documentation describing post-service accomplishments, or advocacy letters.

Based on your claim that a mental health condition is related to your request, the Board considered the AO. The AO states in pertinent part:

The Petitioner's service record is missing his complete enlistment paperwork, including his full physical. Additionally, his service medical record was not available for review. Among the available records, there is no evidence he has been diagnosed with a mental health condition during his military service. During the investigation of the CMEO complaint, some Sailors stated that he had been diagnosed with bipolar disorder before service. It is possible that some of the Petitioner's described behavior regarding poor anger management, such as abrupt departures or slamming doors, could be attributed to a purported bipolar disorder diagnosis. However, it is less likely that racist remarks could be attributed to a mental health condition, particularly as the Petitioner claims that he did not make the remarks. Additional records (e.g., post-service mental health records describing the Petitioner's diagnosis, symptoms, and their 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 insufficient evidence the Petitioner's purported mental health condition may be attributed to military service. There is insufficient evidence that his misconduct could be attributed to a mental health condition."

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 contentions noted above and your desire to be retained in the Navy and have your NJP reduced. Based upon this review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board noted that you admitted to making inappropriate remarks that formed the basis for your NJP and that your actions were wrong. The Board also noted that witness statements included various racist statements that you made and that you were physically aggressive with another Sailor. Based on these factors, the Board determined that your NJP was supported by a preponderance of the evidence, your CO acted within his discretionary authority, and your NJP was conducted

in accordance with the *Manual for Courts-Martial* (2019 ed.). Further, the Board substantially concurred with the AO that there is insufficient evidence that your misconduct could be attributed to a mental health condition. As a result, after applying liberal consideration, the Board did not find evidence of an error or injustice that warrants reinstating you to the Navy, reducing your NJP, or granting clemency in your case. Accordingly, the Board determined that there is insufficient evidence to warrant relief.

You also indicated in your application that sexual assault/harassment is related to your case and you were the victim of reprisal. The Board, however, found no evidence to support your allegations. The Board thus determined there was insufficient evidence to conclude you were the victim of reprisal in violation of 10 USC 1034. 10 USC 1034 provides the right to request Secretary of Defense review of cases with substantiated reprisal allegations where the Secretary of the Navy's follow-on corrective or disciplinary actions are at issue. Additionally, in accordance with DoD policy you have the right to request review of the Secretary of the Navy's decision regardless of whether your reprisal allegation was substantiated or non-substantiated. Your written request must show by clear and convincing evidence that the Secretary of the Navy acted arbitrarily, capriciously, or contrary to law. This is not a de novo review and under 10 USC 1034(c) the Secretary of Defense cannot review issues that do not involve reprisal. You must file within 90 days of receipt of this letter to the Under Secretary of Defense for Personnel and Readiness (USD(P&R)), Office of Legal Policy, 4000 Defense Pentagon, Washington, DC 20301-4000. Your written request must contain your full name, grade/rank, duty status, duty title, organization, duty location, mailing address, and telephone number; a copy of your BCNR application and final decisional documents; and, a statement of the specific reasons why you are not satisfied with this decision and the specific remedy or relief requested. Your request must be based on factual allegations or evidence previously presented to the BCNR, therefore, please also include previously presented documentation that supports your statements.

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,

6/5/2022

[REDACTED]
Executive Director
[REDACTED]