



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: 1990-22
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 11 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 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 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). 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 12 May 2022. You were provided an opportunity to respond to the AO, but chose not to do so.

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.

During your enlistment processing you disclosed having abused narcotics, dangerous drugs, or marijuana. You subsequently enlisted in the Navy and began a period of active duty on 21 October 1980. On 24 November 1981, you received your first nonjudicial punishment (NJP) for malingering and unauthorized egress from a Naval vessel by jumping over the side of the ship while underway. On 16 April 1982, you were convicted at a summary court-martial (SCM) of two specifications of wrongful use and possession of false identification cards, wrongfully selling military property, and intentionally jumping over the side of a ship. You were sentenced to confinement at hard labor (CHL) for 24 days and to forfeit \$367.00 pay per month for one month. On this date, you also commenced a period of unauthorized absence (UA) which ended in your surrender 62 days later. Your official military personnel file (OMPF) does not contain further information specific to this UA. However, on 21 June 1982, you commenced another period of UA which ended when you surrendered nine days later on 30 June 1982. On 1 July 1982, you received a second NJP for your nine day UA. On 4 July 1982, while on restriction, you commenced another period of UA, this one lasting until you surrendered three days later on 7 July 1982. On 9 July 1982, you received a second SCM for your three day UA and for breaking restriction. You were found guilty and sentenced to CHL for 30 days and to forfeit \$300.00 pay per month for one month. Upon reassessment of your case by the Convening Authority, only so much of the sentence as provides for CHL for five days was approved. On 14 July 1982, you were notified of your Commanding Officer's (CO) intent to recommend to the separation authority that you be discharged with an Other Than Honorable (OTH) characterization of service by reason of misconduct – frequent involvement of a discreditable nature with military authorities, at which time you waived your right to consult with counsel and have your case heard before an administrative discharge board (ADB). On 9 August 1982, while awaiting the separation authority's decision regarding your discharge, you received a third NJP for failing to go to your appointed place of duty/restricted muster on three separate occasions. On 30 August 1982, the separation authority directed you be discharged with an OTH by reason of misconduct and, on 25 October 1982, you were so discharged.

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 and contention that you incurred PTSD issues/mental disorder while in the military.

Based on your assertion that you incurred PTSD during military service, which might have mitigated your discharge character of service, a qualified mental health professional reviewed your request for correction to your record and provided the Board with the AO. The AO stated in pertinent part:

There is no evidence that he was diagnosed with a mental health condition in military service. Although his complete medical record was not available for review, it is presumed that he was evaluated by mental health prior to misconduct charges of malingering and intentionally jumping from the ship. He has provided no medical evidence in support of his claims. 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.

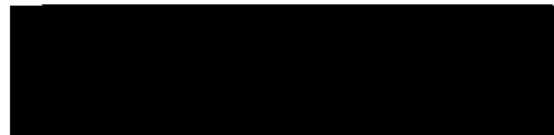
The AO concluded, “[b]ased on the available evidence, it is my clinical opinion that there is insufficient evidence of a diagnosis of PTSD that may be attributed to military service. There is insufficient evidence that his misconduct may be attributed to PTSD.”

Based on 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 SCMs and NJPs, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and found that your conduct showed a complete disregard for military authority and regulations. In addition, the Board considered the significant negative impact your conduct of jumping overboard while underway on two occasions had on the operations of the ship and the safety of other Sailors. Finally, the Board concurred with the AO that there is insufficient evidence that your misconduct may be attributed to PTSD. 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. 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 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,

7/25/2022



Executive Director

