



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: 2289-22
Ref: Signature Date

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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 18 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 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 an advisory opinion (AO) from a qualified mental health professional, 3 June 2022 and your response to the AO.

You enlisted in the Navy and began a period of active duty on 9 June 1986. On 26 September 1986, you received your first nonjudicial punishment (NJP) for two specifications of failing to obey a lawful order and for misbehavior of a sentinel. On 18 June 1987, you received a second NJP for failing to obey a lawful order and for an unauthorized absence (UA) which lasted less than 24 hours. On 19 June 1987 and 14 July 1987, you were issued an administrative counseling retaining you in the naval service and documenting the aforementioned deficiencies in your performance and conduct. This administrative remark also advised you that further deficiencies in your performance and/or conduct may result in disciplinary action and in processing for administrative discharge. On 21 October 1987, you received a third NJP for another period of UA. A few weeks later, on 6 November 1987, you received a fourth NJP for disrespect to a petty officer, failure to obey a lawful order, and wrongful appropriation. On 9 November 1987,

you were notified of your pending administrative separation as a result of misconduct due to pattern of misconduct (POM), at which time you waived your procedural rights. On 13 November 1987, your commanding officer (CO) recommended to the separation authority that you be discharged with an Other Than Honorable (OTH) characterization of service. On 18 November 1987, the separation authority agreed with your CO resulting in your discharge on 25 November 1987.

You subsequently submitted an application via the Naval Discharge Review Board (NDRB) requesting your discharge be upgraded to an Honorable characterization. The NDRB denied your request for an upgrade to your characterization of service on 17 March 1989. However, the NDRB made some administrative corrections to your DD Form 214.

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 contentions that: (1) your discharge has affected your quality of life regarding employment and Department of Veterans Affairs (VA) benefits, (2) you experienced a sense of failure due to the OTH discharge you received, (3) it has been tough trying to gain decent employment, (4) you were told during your separation that you would never be able to obtain employment with the government, (5) you are also experiencing the terribly reality of not being able to partake in VA benefits, and (6) you should have never been discharged in the first place because you never committed a real crime but you were targeted by racism. For purposes of clemency consideration, the Board noted you did not provide supporting documentation describing post-service accomplishments, or advocacy letters.

Based on your assertion that you incurred mental health concerns during military service, which might have mitigated our 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, 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. Unfortunately, the Petitioner's personal statement is not sufficiently detailed to establish a clinical diagnosis or provide a nexus with his misconduct, particularly as he claims that he did not perform the misconduct. Additional records (e.g., post-service mental health records describing 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 of a mental health condition that could be attributed to military service. There is insufficient evidence that his misconduct could be attributed to a mental health condition."

The Board also reviewed your response to the AO, dated 27 July 2022, where you assert you were suffering from mental health conditions due to the racial tension you encountered while service. You reiterate your arguments that you were treated unjustly that negatively affected your ability to enjoy veterans' benefits.

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, 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 took into consideration that you were warned on three separate occasions that further misconduct would have negative consequences that included administrative separation from the Navy. Furthermore, the Board noted that you did not provide any substantiating evidence to support your assertions of unfair treatment. Moreover, absent a material error or injustice, the Board declined to summarily upgrade a discharge solely for the purpose of facilitating veterans' benefits, or enhancing educational or employment opportunities. Finally, the Board concurred with the AO that there is insufficient evidence that your misconduct may be attributed to a mental health condition. While the Board considered your response to the AO, they did not find your statement persuasive. 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 by 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,

8/3/2022

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Deputy Director

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