



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: 2502-22

Ref: Signature date

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Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to 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 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 22 August 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, 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 6 June 2022, which was previously provided to you. Although you were afforded an opportunity to submit an AO rebuttal, you chose not to 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 issue(s) involved. Therefore, the Board determined that a personal appearance was not necessary and considered your case based on the evidence of record.

You enlisted in the Navy and began a period of active duty on 16 November 1982. On 2 May 1983, you began a period of unauthorized absence (UA) which lasted 14 days. On 22 May 1983

and 29 May 1983, you were UA from your appointed place of duty. From a period beginning on 31 May 1983 to 7 July 1983, you began two periods of UA totaling 27 days. On 28 July 1983, you received nonjudicial punishment (NJP) for five periods of UA and failure to obey a lawful order. From a period beginning on 14 October 1983 to 16 November 1983, you had seven periods of UA totaling 11 days, 16 hours, and 50 minutes. On 11 December 1983, you began a period of UA from your appointed place of duty. On 22 December 1983, you received a second NJP for seven periods of UA and one instance of drunk and disorderly conduct. On 27 December 1983, you were apprehended by civilian authorities and charged with sexual battery. On 25 May 1984, you began a fourteenth period of UA which lasted six days, 2 hours, and 5 minutes. On 18 June 1984, you received a third NJP for two periods of UA. On the same date, you began a fifteenth period of UA which lasted 21 days and resulted in your apprehension by military authorities. On 9 July 1984, you were convicted by summary court martial (SCM) for a period of UA and breaking restrictions. You were sentenced to confinement at hard labor, and forfeiture of pay. On 7 August 1984, you began a sixteenth period of UA which lasted 14 days. Subsequently, you were notified of the initiation of administrative separation proceedings by reason of misconduct due to pattern of misconduct. On 20 August 1984, you elected to waive all your procedural rights. On 23 August 1984, your commanding officer recommended an Other Than Honorable (OTH) discharge characterization of service by reason of misconduct due to pattern of misconduct. From a period beginning on 21 August 1984 to 31 August 1984, you had two periods of UA totaling 11 days and resulting in your apprehension by civilian authorities. On 3 September 1984, the discharge authority approved and ordered an OTH discharge characterization of service by reason of misconduct due to pattern of misconduct. On 13 September 1984, you were 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 for a discharge upgrade and contentions that you were physically abused and harassed by a gay individual and the Navy did not assist you. In addition, you request an upgrade for the purpose of obtaining Department of Veterans Affairs benefits. For purposes of clemency consideration, the Board noted you did not provide supporting documentation describing post-service accomplishments or advocacy letters.

As part of the Board's review, the Board considered the AO. The AO stated in pertinent part:

There is no evidence that Petitioner 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. He has provided no post-service medical evidence in support of his claims. Unfortunately, his personal statement is not sufficiently detailed to establish a clinical diagnosis or provide a nexus with his misconduct. Additional records (e.g., postservice medical 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 of a diagnosis of Post-Traumatic Stress Disorder (PTSD) that could be attributed to military service. There is insufficient evidence that his misconduct could be attributed to PTSD.”

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 and SCM, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the likely negative effect it had on the good order and discipline of your command. The Board also considered the likely discrediting effect your multiple civilian apprehensions had on the Navy. Further, the Board noted that you provided no evidence to substantiate your contentions. Additionally, 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 could be attributed to PTSD. As a result, the Board concluded significant negative aspects of your service outweighed the positive aspects and continues to warrant an OTH characterization. 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,

9/8/2022

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