



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: 2504-22
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 15 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). As part of the Boards review, a qualified mental health professional reviewed your request and provided the Board with an Advisory Opinion (AO) on 24 June 2022. You were provided an opportunity to respond to the AO but chose not to do so.

During your enlistment processing you disclosed prior use of drugs and an enlistment waiver was granted. You enlisted in the Navy and began a period of active duty on 5 February 1980. On 22 February 1980, you were counseled regarding the negative influence of drug involvement and you disavowed any future drug use. On 27 May 1980, you received further counseling defining drug abuse, describing the hazards of using drugs and documenting your understanding that you will periodically be required to submit to a urine sample to detect the use of drugs. On 14 April

1981, you were counseled that any future involvement of a discreditable nature with civil or military authorities may result in administrative processing. On 16 April 1981, you received your first nonjudicial punishment. Unfortunately, documents specific to this NJP were not found in your official military personnel file (OMPF). Twelve days later, on 28 April 1981, you received a second NJP for two specifications of failure to obey a lawful written order. On 1 July 1981, you were found guilty at a special court-martial (SPCM) of possessing 11 Quaaludes, two specifications of selling 37 Quaaludes, and unauthorized absence of seven days. You were sentenced to confinement at hard labor for two months, to forfeit \$334.00 pay per month for two months, to be reduced in rank to E-1, and to be separated with a Bad Conduct Discharge (BCD). On 8 June 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 contentions that you had an accident that caused a change in your personality, (2) you suffered from Traumatic Brain Injury (TBI), and (3) you spent a week in a hospital due to the injury. For purposes of clemency consideration, the Board noted you provided advocacy letters and supporting documentation describing post-service accomplishments.

Based on your assertion that you are dealing with a diagnosed TBI and this diagnosis might mitigate your unfavorable characterization of service, the BCNR Physician Advisor who is a licensed clinical psychologist (Ph.D.), reviewed your record and provided the Board with the AO. The Ph.D. noted in pertinent part:

Petitioner's available in-service personnel and medical records did not contain a diagnosis of TBI, or other mental health conditions, nor did it contain a record of psychological symptoms or behavioral changes indicative of a diagnosable mental health condition or of residual medical or psychological symptoms indicative of TBI. Throughout his counselings, disciplinary, and administrative processing, there were no concerns raised of any issues warranting additional referrals to mental health or substance abuse resources. In his separation physical examination, Petitioner denied any history of head trauma, mental health symptoms, or residual symptoms indicative of TBI and described his health at the time of his discharge as "good". Should the Petitioner choose to submit additional records, they will be reviewed in context of his claims.

The Ph.D. concluded, "[b]ased on the available evidence, it is my clinical opinion preponderance of available objective evidence fails to support Petitioner's contention he incurred a TBI attributable to his military service. There is insufficient evidence to support Petitioner's contention that his in-service misconduct could be attributed to TBI."

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 NJPs and SPCM, 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. Further, the Board concurred with the AO that

there is insufficient evidence that your misconduct could be attributed to TBI. As a result, the Board concluded your conduct constituted a significant departure from that expected of a Sailor and continues to warrant a BCD characterization. While the Board commends you post-discharge good conduct and 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 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,

9/5/2022

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Executive Director

Signed by: █