



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: 2511-22
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 10 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 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, 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 23 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.

You enlisted in the Navy and began a period of active duty on 23 September 1996. On 31 March 1997, you received a psychiatric evaluation and were diagnosed with an adjustment disorder and personality disorder. You were recommended for administrative discharge based upon your personality disorder. On 16 May 1997, you received non-judicial punishment (NJP) for larceny. Subsequently, you were notified that you were being recommended for administrative discharge from the Navy by reason of convenience of the government due to your diagnosed personality disorder and misconduct due to commission of a serious offense. You were advised of, and waived your procedural rights to consult with military counsel and to present your case to an

administrative discharge board (ADB). Your commanding officer (CO) then forwarded your administrative separation package to the separation authority (SA) recommending your administrative discharge from the Navy with an Other Than Honorable (OTH) characterization of service. The SA approved the recommendation for administrative discharge and directed your OTH discharge from the Navy. On 10 June 1997, you were discharged from the Navy with an OTH characterization of service by reason of misconduct due to commission of a serious offense.

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 character of service and contentions that: (1) you were young, immature, homesick, and have regretted every day of your life, the way your military career ended and the way your life has turned out; (2) you were not stable at the time due to the mental issues that were going on in your life; (3) you have been severely depressed throughout your adulthood, which landed you in many psychiatric wards; and (4) you have recently graduated from a substance abuse program, which has helped you tremendously with getting your life back in order. 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, a qualified mental health professional reviewed your request and provided the Board with an AO on 23 June 2022. The AO noted in pertinent part:

During his military service, the Petitioner was diagnosed with mental health conditions (Adjustment Disorder and Personality Disorder), as well as undisclosed mental health concerns (i.e., dysthymia/depression, suicide attempt) existing prior to enlistment. Petitioner's diagnoses were based on his clinical presentation (i.e., observed behaviors), the information he chose to disclose to the mental health clinician, and the psychological evaluation performed by the mental health clinician as documented in service records. The Petitioner has provided no medical evidence his in service diagnoses were erroneous. Furthermore, misconduct such as stealing from the Naval Exchange would not be attributed to a mental health condition.

The AO concluded, "[b]ased on the available evidence, it is my considered clinical opinion, there is evidence of a mental health condition (MHC) (Adjustment Disorder) that can be attributed to military service; however, there is insufficient evidence Petitioner's misconduct/behavior could be attributed to a MHC."

Based upon this review, the Board concluded your potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your NJP, 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. Further, the Board concurred with the AO that while there is evidence of a MHC that can be attributed to military service, there is insufficient evidence your misconduct/behavior could be attributed to a MHC. The Board agreed with the AO that larceny is not the type of misconduct attributable to a mental health condition. Finally,

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. As a result, the Board determined 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 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,

8/23/2022

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Executive Director
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