



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: 2764-22
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 27 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, 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, which was previously provided to you. Although you were afforded an opportunity to submit an AO rebuttal, you did not 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.

You enlisted in the Navy and commenced active duty on 7 September 1982. On 16 June 1984, you were issued an administrative remarks (Page 13) counseling concerning deficiencies in your performance and conduct: specifically, repeated lateness, failure to pass information to the

Officer of the Deck during Sea and Anchor detail, and leaving your assigned work spaces without notifying your supervisor. You were advised that any further deficiencies in your performance and/or conduct may result in disciplinary action and in processing for administrative separation from the naval service. During the period from 27 July 1984 to 3 November 1984, you received three instances of non-judicial punishment (NJP). Your offenses were three periods of unauthorized absence, missing ship's movement, absence from your appointed place of duty, disrespectful in language toward a superior noncommissioned officer (NCO), and dereliction of duty. Subsequently, you were notified that you were being recommended for administrative discharge from the Navy by reason of misconduct due to pattern of misconduct. 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. Prior to the SA's decision, on 17 November 1984, you received your fourth NJP for disobeying a lawful order and assault. The SA approved the recommendation for administrative discharge and directed your OTH discharge from the Navy by reason of misconduct due to frequent involvement of a discreditable nature with military authorities. On 17 December 1984, you were discharged from the Navy with an OTH characterization of service by reason of misconduct due to frequent involvement of a discreditable nature with military authorities.

Post-discharge, you petitioned the Naval Discharge Review Board (NDRB) for an upgrade to your characterization of service. The NDRB denied your request on 15 April 1996.

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 was a victim of "racism and physical and verbal abuse," which mentally affected you; and (2) you were not aware that you were suffering from PTSD. The Board also considered your detailed statement chronicling your recollection of events that led to your discharge from the Navy. 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 13 June 2022. The AO noted 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, he has provided no medical evidence to support his claims and his personal statement is not sufficiently detailed to establish a clinical diagnosis or provide a nexus with his misconduct. 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 could be attributed to PTSD.”

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 four NJPs, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and concluded your misconduct showed a complete disregard for military authority and regulations. Further, the Board also considered the likely negative impact your conduct had on the good order and discipline of your command. While the Board considered your contentions, the Board found no evidence to substantiate your contention that you was a victim of racism, physical abuse, or verbal abuse. The Board noted you provided no evidence, other than your statement, to substantiate any of your allegations of unfair treatment. Finally, the Board concurred with the AO that there is insufficient evidence of a diagnosis of PTSD that may be attributed to military service, and there is insufficient evidence that your misconduct could be attributed to PTSD. 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,

8/10/2022

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Executive Director

Signed by: █