



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: 3132-22
11165-14
4490-05
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.

Because your application was submitted with new evidence not previously considered, the Board found it in the interest of justice to review your application. A three-member panel of the Board, sitting in executive session, considered your application on 7 September 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 25 August 2017 guidance from the Office of the Under Secretary of Defense for Personnel and Readiness (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 and your response to the AO.

■, hereinafter referred to as Petitioner, previously applied to this Board for an upgrade to his characterization of service. Petitioner was denied relief on 7 March 2006 and 25 September 2015.

Petitioner enlisted in the Navy and began a period of active duty on 24 July 1961. Subsequently, Petitioner completed this enlistment with an Honorable characterization of service, on

29 December 1964, and immediately reenlisted. On 8 March 1966, Petitioner received non-judicial punishment (NJP) for larceny. On 7 January 1967, Petitioner was convicted by a summary court-martial (SCM) of unauthorized absence (UA) totaling 10 days. During the period from 14 February 1967 to 14 November 1967, Petitioner received four instances of NJP. Petitioner's offenses were UA, breaking restriction, assault, creating a disturbance, and incapacitated for the proper performance of duty. On 7 May 1968, Petitioner was convicted by a special court-martial (SPCM) of UA totaling 21 days. On 29 October 1968, Petitioner received his sixth NJP for two specifications of UA totaling six days and failure to comply with technical arrest orders.

Subsequently, Petitioner was notified that he was being recommended for administrative discharge from the Navy by reason of unfitness due to frequent involvement of a discreditable nature with military authorities. Petitioner was advised of, and waived his procedural rights to consult with military counsel and to present his case to an administrative discharge board (ADB). Petitioner's commanding officer (CO) then forwarded his administrative separation package to the separation authority (SA) recommending his administrative discharge from the Navy with an Other Than Honorable (OTH) characterization of service. The SA approved the recommendation for administrative discharge and directed Petitioner's OTH discharge from the Navy. On 12 December 1968, Petitioner was discharged from the Navy with an OTH characterization of service by reason of unfitness.

In your petition, the Board carefully considered all potentially mitigating factors to determine whether the interests of justice warrant relief in this case in accordance with the Wilkie Memo. These included, but were not limited to, your desire to have the Petitioner's discharge character of service upgraded and contentions that: 1) Petitioner incurred post-traumatic stress disorder (PTSD) during his first period of service, which contributed to misconduct during his second enlistment; and 2) Petitioner's second enlistment was cut short due to his PTSD and pain. The Board also considered your assertions that: a) Petitioner's medications kept him very lethargic and argumentative; b) at one point in time, Petitioner committed theft to acquire attention to himself; c) without adequate treatment for his PTSD it escalated; d) the lack of help and improper medication should also show the escalation of his weakened mental state; and e) on the merit of his service connected PTSD, upon his first enlistment, that should be enough to grant the change of his character of service to Honorable or Medical. For purposes of clemency consideration, the Board noted your submission of supporting documentation on behalf of the Petitioner.

As part of the Board's review, a qualified mental health professional reviewed your request and provided the Board with an AO on 27 May 2022. The AO noted in pertinent part:

During military service, he was diagnosed with a personality disorder that was considered insufficiently severe to recommend separation. Unfortunately, there is no medical evidence in support of his claims. While there is evidence of service connection for medical ailments, the diagnosis is not listed. While UA and alcohol use could be related to avoidance of military reminders of trauma,

available personal statements are not sufficiently detailed to establish a nexus with his misconduct, particularly as theft, burglary, and gambling are not typical symptoms of PTSD. Additional records (e.g., complete VA 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, "it is my clinical opinion that there is insufficient evidence of a diagnosis of PTSD or another mental health condition that may be attributed to military service. There is insufficient evidence that his misconduct could be attributed to PTSD or another mental health condition."

In response to the AO, you provided rebuttal arguments to the opinions made in the AO and reiterated your basis for relief including assertions that Petitioner was struggling with depression, anxiety, and PTSD.

Based upon this review, the Board concluded your potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that Petitioner's misconduct, as evidenced by his six NJPs, SCM and SPCM convictions, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of Petitioner's misconduct and concluded it showed a complete disregard for military authority and regulations. The Board also considered the negative impact Petitioner's conduct likely had on the good order and discipline of his command. Furthermore, notwithstanding your arguments, the Board concurred with the AO that there is insufficient evidence of a diagnosis of PTSD or another mental health condition that may be attributed to military service, and there is insufficient evidence that his misconduct could be attributed to PTSD or another mental health condition. Further, the Board noted that Petitioner's conduct scores were insufficient to qualify for a fully Honorable characterization of service. At the time of Petitioner's service, a conduct mark average of 3.0 was required to be considered for a fully Honorable characterization of service; a minimum mark Petitioner failed to achieve due to his extensive record of misconduct. The Board did not believe that Petitioner's record was otherwise so meritorious as to deserve a discharge upgrade. Based on these factors, the Board determined Petitioner's conduct constituted a significant departure from that expected of a Sailor and continues to warrant an OTH characterization. Despite Petitioner's prior period of Honorable service, 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

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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,

9/23/2022

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Executive Director

Signed by: █