



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: 3191-22
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 limitations 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 29 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 provider, which was previously provided to you. Although you were afforded the opportunity to submit a rebuttal, you chose not to do so.

You enlisted and began a period of active duty in the Navy Reserve on 18 October 1988. On 3 March 1989, you received nonjudicial punishment (NJP) for failure to obey an order or regulation by drinking beer in an unauthorized area and for drunkenness/incapacitation in the performance of duties. These offenses were in violation of Articles 92 and 134, Uniform Code of Military Justice (UCMJ). Your second NJP occurred, on 10 August 1989, for failure to obey a lawful order to clean aircraft bilges and dereliction of duty in violation of Articles 91 and 92, UCMJ. On 23 April 1990, you were convicted by special court martial (SPCM) for larceny of four wheels and tires valued at \$400 or more in violation of Article 121, UCMJ. You were sentenced to confinement at hard labor for 75 days, forfeiture of \$275 pay per month for three months, reduction in rank to the pay grade E-1, and to be discharged with a Bad Conduct

Discharge (BCD). On 5 June 1990, you requested to be placed on appellate leave. The U.S. Court of Military Review affirmed the findings and sentence, on 11 February 1991, and you were discharged with a BCD on 31 October 1991.

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 desire to upgrade your discharge and contentions that you incurred depression and manic disorder due to traumatic events that occurred during your service aboard aircraft carriers. You state there were Sailors who passed away aboard the ██████████ ██████████ who were stored in the milk cooler until the ship went ashore and their families were able to claim the bodies, you were held in sick bay for two days due to being suicidal, your mother only wrote to you twice, and you became involved in legal trouble. You also contend your mother made a false allegation against your father, your father was apprehended, and your mother obtained restraining orders against you and your father. You further contend you were awarded Social Security disability in 2016, for disabilities to include mental health conditions that began while in-service. For purposes of clemency consideration, the Board noted you did not provide supporting documentation describing post-service accomplishments or advocacy letters.

Since you claimed the existence of a mental health condition may be related to your request, the Board also relied on the AO dated 24 May 2022. The AO stated 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. Post-service, he has received diagnoses of MDD, PTSD, and ADHD that are temporally remote to military service and there is no indication of a relation to his military service. Unfortunately, his personal statement is not sufficiently detailed to establish a clinical diagnosis or provide a nexus with his misconduct, particularly as it is difficult to consider how theft is a symptom of a mental health condition. 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 mental health condition that may be attributed to military service. There is insufficient evidence that his misconduct could be attributed to a mental health condition.”

Based upon this review, the Board concluded that the potentially mitigating factors in your case were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your two NJPs and SPCM, 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 there is insufficient evidence that your misconduct could be attributed to a mental health

condition. As a result, the Board concluded your conduct constituted a significant departure from that expected of a Sailor and continues to warrant a BCD. 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 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,

9/12/2022

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