



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: 3444-22
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 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 21 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 Kurta Memo, the 3 September 2014 guidance from the Secretary of Defense regarding discharge upgrade requests by Veterans claiming post-traumatic stress disorder (PTSD)/mental health condition (MHC) (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 an advisory opinion (AO) from a qualified mental health professional, dated 26 July 2022. Although you were provided an opportunity to comment on the AO, you chose not to do so.

You entered active duty with the Navy on 3 September 1991. On 10 November 1992, you received non-judicial punishment (NJP) for 13 specifications of obtaining services under false pretenses. On 13 August 1993, a summary court-martial (SCM) convicted you of desertion and unauthorized absence (UA) totaling 209 days. Subsequently, you were notified of pending administrative separation action by reason of misconduct due to commission of a serious offense. After electing to waive your rights, your commanding officer (CO) forwarded your package to the separation authority (SA) recommending your discharge by reason of misconduct due to commission of a serious offense, with an Other Than Honorable (OTH) characterization of service. The SA approved the recommendation and, on 15 September 1993, 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 incurred a MHC while on active duty and suffered from depression due to personal stressors. Additionally, you contend that you went UA to care for your finance who was having medical issues with your unborn child. For purposes of clemency consideration, the Board noted you provided advocacy letters and supporting documentation describing post-service accomplishments.

As part of the Board's review, a qualified mental health professional reviewed your request and provided the Board with an AO on 26 July 2022. The mental health professional stated in pertinent part:

Petitioner's OMPF did not include any psychological symptoms/behavioral changes indicative of a mental health condition. There is no evidence of a diagnosis of a mental health condition during military service. Although Petitioner claimed that he incurred depression due to personal stressors, there was no evidence presented that indicated his experience of life stressors was extraordinary or unique or that he met the diagnostic criteria for a mental health condition during his military service. He has provided no medical evidence in support of his claims. Unfortunately, the Petitioner's personal statement is not sufficiently detailed to establish clinical symptoms. It is also difficult to determine how fraud would be attributed to depression. 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, "it is my considered clinical opinion there is insufficient evidence of a mental health condition that may be attributed to military service. There is insufficient evidence his misconduct could be attributed to a mental health condition.

Based upon this review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined your misconduct, as evidenced by your NJP and SCM, outweighed the potential 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 the command. Further, the Board concurred with AO that there is insufficient evidence of a mental health condition that may be attributed to your military service or misconduct. Finally, while the Board considered the documentation you provided, they concluded it was insufficient to mitigate the seriousness of your misconduct. The Board noted that you served less than two years on active duty during which you were involved in multiple incidents of misconduct that included a period of UA totaling over six months. As a result, the Board concluded your conduct constituted a significant departure from that expected of a Sailor and continues to warrant an OTH characterization. While the Board commends your post-discharge good character 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.

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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,

9/29/2022

