



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: 3564-22
Ref: Signature Date

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Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to Title 10, United States Code, Section 1552. 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 Board waived the statute of limitation 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 19 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 the 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) of a qualified mental health provider, which was previously provided to you. You were afforded an opportunity to submit a rebuttal to the AO, you chose not to do so.

The Board determined that your personal appearance, with or without counsel, would not materially add to the understanding of the issues involved. Therefore, the Board determined a personal appearance was not necessary and considered your case based on evidence of record.

You enlisted in the Navy and began a period of active duty on 30 May 2002. On 19 March 2003, you received nonjudicial punishment (NJP) for issuing five checks totaling over \$1700 to the Navy Exchange when you knew that you would have insufficient funds to cover the checks and for making a false official statement. You were notified of administrative separation processing for the reason of misconduct due to commission of a serious offense and elected to waive all applicable rights. Your General (Under Honorable Conditions) discharge was approved by

Commanding Officer, Naval Submarine School, and you were discharged, on 28 April 2003, with a final trait average of 2.0.

You previously applied to the Naval Discharge Review Board (NDRB) contending that you should have been discharged for your bipolar disorder which you believe contributed to your misconduct. The NDRB denied your request on 13 February 2013 after concluding your discharge was proper as issued.

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 include, but were not limited to, your desire to upgrade your discharge and your contention of suffering a mental health condition. For purposes of clemency consideration, the Board noted you did not provide supporting documentation describing post-service accomplishments or advocacy letters.

Because you contend that a mental health (MH) condition affected your discharge, the Board also considered the AO. 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. He has provided no medical evidence in support of his claims. Unfortunately, his personal statement is not sufficiently detailed to establish clinical symptoms 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 considered clinical opinion there is insufficient evidence of a mental health condition that may be attributed to military service. There is insufficient evidence that all of 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 that your misconduct, as evidenced by your NJP, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct that included lying to your chain of command. Further, the Board noted your relatively brief period of active duty service and considered the likely negative effect your misconduct had on the good order and discipline of the command. Finally, in the absence of any supporting evidence regarding your claims, the Board concurred with the AO regarding your mental health contentions. Ultimately, the Board determined you were fortunate to receive a General (Under Honorable Conditions) characterization based on the severity of your misconduct. As a result, the Board concluded significant negative aspects of your active service outweigh the positive aspects and continue to warrant a General (Under Honorable Conditions) 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 that your request does not merit relief.

You are entitled to have the Board reconsider its decision upon the 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 is attached 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,

9/8/2022

