



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. 3877-22
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 11 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). Additionally, the Board considered the 11 January 2022 advisory opinion (AO) furnished by a qualified mental health provider, which was obtained in connection with the review of your prior petition, docket number 7111-21.

A review of your record reveals that you enlisted in the Navy on 7 September 2005. On 24 June 2006, you received non-judicial punishment for failing to obey a lawful order by drinking underage, and for the destruction of military property. Following your nonjudicial punishment, you were notified that you were being processed for an administrative discharge by reason of misconduct due to the commission of a serious offense. On 6 October 2006, you were separated from the Navy for misconduct with an Other Than Honorable (OTH) discharge characterization and assigned an RE-4 reentry code.

In 2009, you submitted an application with the Naval Discharge Review Board (NDRB). On

15 October 2009, the NDRB denied your application, finding that your discharge was proper as issued and that no change was warranted.

In 2021, you filed a petition with this Board, seeking a change in your discharge to either a General (Under Honorable Conditions) or a medical discharge. As part of the Board review process, the Board obtained the 11 January 2022 AO. The AO stated in pertinent part:

Unfortunately, Petitioner did not provide clarifying information about the trauma related to his PTSD (i.e., when trauma occurred). Information provided via the NDRB suggested Petitioner was experiencing mental health symptoms and was provided treatment while in-service. In addition to mental health symptoms from the depressive disorder, Petitioner was diagnosed with a personality disorder, as well as experiencing stress related to his family. Petitioner's in-service treatment is difficult to ascertain given no military mental health records were provided for review, so progress/effort in therapy cannot be determined. The difficulty is distinguishing what behaviors may be attributed to PTSD or personality disorder symptoms or poor coping skills. The lack of clarifying information made available did not provide enough markers to identify a nexus with his misconduct, such as a chronology of PTSD stressors and his in-service diagnoses/treatment. Additionally, there is no information within his OMPF that implied he was not responsible for his conduct or that he should not be held accountable for his actions. In fact, the NDRB cited evidence Petitioner was "...not mentally ill..." Petitioner indicated he was service-connected with the VA; however, he did not provide any documentation to substantiate his claim or to identify for what condition he is service-connected. Notably, Compensation & Pension disability ratings by the VA is tied to the establishment of Service Connection and is manifestation-based without a requirement that unfitness for military duty be demonstrated.

The AO concluded, "[b]ased on the available evidence, it is my considered clinical opinion there is sufficient evidence Petitioner exhibited behaviors associated with a mental health condition during his military service; however, the preponderance of available objective evidence failed to establish his in-service misconduct could be mitigated by a mental health condition."

In a letter dated 28 February 2022, this Board informed you that it had denied your request for relief, finding that the record reflected that your misconduct was intentional, and demonstrated you were unfit for further service. The Board also concluded that the evidence of record did not demonstrate that you were not mentally responsible for your conduct or that you should otherwise not be held accountable for your actions.

In your current petition, you have requested that your discharge be re-evaluated and changed due to your underlying or misdiagnosed conditions as well as being unfair. In support of your petition for reconsideration and clemency, you provided additional documentation reflecting professional achievements, including certificates demonstrating that you are an insurance producer, and that you have gained important computer skills.

The Board carefully considered your arguments, including the entirety of your petition and all of its enclosures, and it disagreed with your rationale for relief. As it noted in its review of your prior petition, in accordance with the Kurta, Hagel, and Wilkie Memos, the Board gave liberal and special consideration to your record of service, and your contentions about any traumatic or stressful events you experienced and their possible adverse impact on your service. On reconsideration, the Board observed the findings of the AO, and noted the lack of causation between any mental health conditions and your misconduct. Next, the Board focused on the elements of clemency and mitigation, which are set forth in the Wilkie Memo, in light of the documentary new matter that you provided. Specifically, the Board reviewed the materials you provided, and commended you on your post-service success and professional attainments. The Board determined, however, that the material you provided fell short of the documentation that it believed would be sufficient for upgrading your discharge characterization. Accordingly, in the absence of more fulsome post-service clemency materials, the Board denied your request for reconsideration of your discharge characterization upgrade.

Regarding your request for a disability discharge, the Board found insufficient evidence of error or injustice to warrant a change to your narrative reason for separation. While the Board noted that you may have received mental health treatment while on active duty, there was no evidence to indicate your condition was unfitting for continued naval service, i.e. prevented you from performing the duties of your office, grade, rank or rating. Further, the Board considered that you were ineligible for disability processing by virtue of your misconduct that resulted in an administrative separation with an OTH characterization. Based on these factors and given the totality of the circumstances, the Board determined that your request for a disability discharge 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,

7/19/2022

