



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: 4039-22

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 statute of limitation 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 November 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, 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 professional dated 19 September 2022 and your response to the AO.

You enlisted in the Marine Corps and began a period of active duty on 18 July 1974. From a period beginning on 12 November 1974 to 12 May 1975, you received nonjudicial punishment (NJP) on three occasions for the following offenses: wrongfully use provoking words, disrespect toward a Sergeant, and assault on a fellow Marine. On 2 July 1975, you were charged with eight instances of failure to report to your prescribed place of duty, seven instances of disobeying a lawful order from a noncommissioned officer (NCO), disrespect towards an NCO, and incapacitation for proper performance of your duties. On 25 July 1975, you requested an Other Than Honorable (OTH) discharge characterization of service in lieu of trial by court martial.

Subsequently, your commanding officer recommended approval of your request. On 10 August 1975, your administrative separation proceedings were determined to be sufficient in law and fact. On 12 August 1975, the separation authority approved your request for and OTH discharge characterization in lieu of trial by court martial. On 19 September 1975, you were so discharged.

Post-discharge, you applied for a discharge upgrade from the Naval Discharge Review Board (NDRB). On 15 March 1981, the NDBR notified you that your request was denied after concluding that your discharge was proper as issued.

On 2 December 2008, this Board denied your initial petition for a discharge characterization upgrade.

The Board carefully considered all potentially mitigating factors to determine whether the interests of justice warrant relief in your case in accordance with the Kurta, Hagel, and Wilkie Memos. These included, but were not limited to, your desire for a discharge upgrade and contentions that you were suffering from Post Traumatic Stress Disorder (PTSD) and depression, as you were mentally destroyed by your supervisors. For purposes of clemency and equity consideration, the Board noted you did not provide supporting documentation describing post-service accomplishments or advocacy letters.

As part of the Board's review, the Board considered the AO. The AO stated in pertinent part:

There is some evidence that the Petitioner was diagnosed with a substance use disorder during military service, but declined to participate in treatment. Substance use is incompatible with military readiness and discipline and considered amenable to treatment, depending on the willingness of the individual. There is in no evidence he was unaware of his misconduct or not responsible for his behavior. There is no evidence of PTSD or another mental health condition during military service. Post-service, he has provided evidence of a mental health condition that is temporally remote to military service and appears unrelated. Unfortunately, his personal statement is not sufficiently detailed to establish clinical symptoms or provide a nexus with his misconduct. Additional records (e.g., postservice medical records describing the Petitioner's diagnosis, symptoms, and their specific link to his misconduct) are required to render an alternate opinion.

The AO concluded, "it is my considered clinical opinion 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 his misconduct could be attributed to PTSD or another mental health condition."

In response to the AO, you submitted a letter from your mental health provider. The letter attests that you are diagnosed with Bipolar Disorder I and currently under his treatment.

After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your NJPs and request to be discharged in lieu of trial by court-martial, outweighed these mitigating

factors. In making this finding, the Board considered the seriousness of your misconduct and concluded it showed a complete disregard for military authority and regulations. Additionally, despite evidence that you are currently under treatment for bipolar disorder, the Board concurred with the AO that there is insufficient evidence that your misconduct could be attributed to PTSD, or a mental health condition. In particular, the Board noted that there is no evidence of PTSD or any other mental health condition while you were on active duty, or evidence that you were unaware of your misconduct or not responsible for your behavior. Finally, the Board determined that you already received a large measure of clemency when the Navy agreed to administratively separate you in lieu of trial by court-martial; thereby sparing you the stigma of a court-martial conviction and likely punitive discharge. As a result, the Board concluded your conduct constituted a significant departure from that expected of a service member and continues to warrant an OTH characterization. Even in light of the Wilkie Memo and reviewing the record holistically, the Board did not find evidence of an error or injustice that warrants upgrading your characterization of service or granting an upgraded characterization of service as a matter of clemency or equity. 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 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,

12/7/2022

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Executive Director
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