



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: 4322-22

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 19 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 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 26 July 2022, which was previously provided to you. Although you were afforded an opportunity to submit an AO rebuttal, you chose not to do so.

You enlisted in the Navy and began a period of active duty on 14 September 2000. On 4 January 2001, you began a period of unauthorized absence (UA) which lasted 104 days. As a result, you were referred to a Special Court-Martial. On 19 April 2001, you requested an Other Than Honorable (OTH) discharge characterization of service in lieu of trial by court-martial. On 1 May 2001, the discharge authority approved your request for an OTH discharge characterization in lieu of trial by court martial. On 9 May 2001, you were discharged with an OTH.

On 15 June 2017, this Board denied your request 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 Wilkie Memo. These included, but were not limited to, your desire for a discharge upgrade and change to your reentry code. In addition, the Board considered your contention that you were diagnosed with a mental health condition (MHC). For purposes of clemency 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:

Petitioner's OMPF did contained vague evidence of a diagnosis of depression. Unfortunately, Petitioner did not provide clarifying information about his MHC (i.e., symptoms experienced onset, post-discharge diagnosis). The lack of clarifying information made available did not provide enough markers to establish an onset and development of mental health symptoms or identify 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 MHC that can be attributed to military service, or that his in-service misconduct could be attributed to a MHC."

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 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 the fact you were UA almost half of time you were on active duty. Additionally, 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 an OTH characterization and RE-4 reentry code. After applying liberal consideration, the Board did not find evidence of an error or injustice that warrants upgrading your characterization of service, changing your reentry code, or granting clemency in your case. 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, _____

10/4/2022



Executive Director

