



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. 4542-22
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 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 2 February 2023. 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) (collectively the "Clarifying Guidance"). The Board also considered the 1 December 2022 advisory opinion (AO) from a qualified medical professional and your response to the AO.

A review of your record shows that you enlisted in the Navy and commenced a period of active duty on 1 September 1987. On 22 April 1988, you were convicted by a summary court-martial for a period of unauthorized absence from 11 January 1988 to 30 March 1988. On 20 May 1988, you were notified of the initiation of administrative separation processing and your rights in connection therewith. You waived your right to an administrative separation board. On 21 May 1988, your commanding officer transmitted your administrative separation package to the discharge authority. On 27 May 1988, the discharge authority directed your discharge. On 10 June 1988, you were discharged with an Other Than Honorable (OTH) characterization of service.

In your petition, you request that your discharge characterization be changed from OTH to General (Under Honorable Conditions) with a medical discharge. In support of your request, you contend that you suffered from post-traumatic stress disorder, schizophrenia, and other psychological disorders, which arose during your service, and which mitigated your misconduct and, for which you should receive a medical discharge.

To assist it in reviewing your petition, the Board obtained the AO, which was considered unfavorable to your position. The AO reviewed all materials associated with your petition, including your service and medical records, as well as your prior petition, and all of the material that you provided in support of your petition. According to the AO, you did not provide evidence that you were “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.” You were provided a copy of the AO, and, on 21 December 2022, you provided medical records in response. These records were provided to the medical professional that prepared the AO, and, after reviewing the materials that you provide, the AO found as follows:

While it is possible that his UA could be attributed to prodromal symptoms of schizophrenia or avoidance symptoms associated with PTSD, there is insufficient information regarding his purported trauma or symptoms of schizophrenia to establish a nexus with his misconduct. Additional treatment notes, complete VA records, and/or testing regarding his history and diagnoses may aid in clarifying his diagnoses of Schizophrenia and PTSD and establishing a nexus with his misconduct.

The AO concluded, “there is post-service evidence of PTSD and another mental health condition that have been attributed to military service. There is insufficient evidence his misconduct could be attributed to PTSD or another mental health condition.”

The Board carefully reviewed all of your contentions and the material that you submitted in support of your petition, and the Board disagreed with your rationale for relief. In reaching its decision, the Board observed that, in order to qualify for military disability benefits through the Disability Evaluation System with a finding of unfitness, a service member must be unable to perform the duties of their office, grade, rank or rating as a result of a qualifying disability condition. Alternatively, a member may be found unfit if their disability represents a decided medical risk to the health or the member or to the welfare or safety of other members; the member’s disability imposes unreasonable requirements on the military to maintain or protect the member; or the member possesses two or more disability conditions which have an overall effect of causing unfitness even though, standing alone, are not separately unfitting.

In reviewing your record, the Board concluded the preponderance of the evidence does not support a finding that you met the criteria for unfitness as defined within the disability evaluation system at the time of your discharge. At the outset, the Board concurred with the findings of the AO, finding that it sufficiently considered the relevant factors and reached a reasonable conclusion. Notably, the Board observed no evidence that you had any unfitting condition while on active duty. While you were later diagnosed with mental health conditions, as described by

the AO, there is no evidence that, while you were on active duty, any medical provider considered your conditions to warrant referral to a medical board for a determination of fitness for duty within the disability evaluation system. In fact, your record demonstrates that the sole basis of your discharge was due to your misconduct. Even assuming you were being processed due to a disability, while you were in service, disability regulations directed misconduct processing to supersede disability processing.

In your petition, you also requested an upgrade of your OTH characterization of service, asserting that your mental health conditions should mitigate the misconduct that you engaged in while on active duty. In reviewing this portion of your request, the Board applied the Clarifying Guidance to your petition in light of your mental health conditions. Despite its application of Clarifying Guidance and providing liberal consideration to the assertions in your current petition, the Board did not believe a discharge upgrade was appropriate. The Board reasoned that, as set forth in the AO, there is insufficient evidence to demonstrate that your misconduct could be attributed to PTSD or another mental health condition. Additionally, the Board considered the seriousness of your misconduct and the likely negative effect it had on the good order and discipline of your command. 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 granting you the relief you requested or granting relief 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 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,

2/15/2023

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Executive Director

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