



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: 4597-22
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 31 October 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). As part of the Board's review, a qualified mental health professional reviewed your request and provided the Board with an Advisory Opinion (AO) on 23 September 2022. Although you were provided an opportunity to respond to the AO, you chose not to do so.

You enlisted in the U.S. Navy and completed a period of honorable active duty service from 26 February 1965 to 19 February 1969. You subsequently reenlisted on 20 February 1969. On 10 December 1971, you received nonjudicial punishment (NJP) for a period of unauthorized absence (UA) lasting 27 days. On 3 January 1972, you were notified of your pending administrative separation by reason of convenience of the government and you waived your right to submit a statement on your behalf. On 6 August 1972, you commenced a second period of UA, which lasted 446 days until 26 October 1973. On 1 February 1974, you were found guilty at

a special court-martial (SPCM) for your period of UA and sentenced to confinement at hard labor for three months, forfeitures of \$110.00 pay per month for three months, to be reduced in rank to E-1, and to be separated with a Bad Conduct Discharge. On 3 June 1975, you were so discharged.

On 13 May 1976, you were granted clemency in the form of a discharge upgrade to Other Than Honorable (OTH) conditions as a result of Presidential Proclamation 4313 and issued a Correction to your Certificate or Release from Discharge from Active Duty (DD Form 215) which became effective on 2 June 1975. Subsequently, you petitioned the Naval Discharge Review Board (NDRB) for an upgrade of your discharge characterization of service and contended, (1) your discharge was improper because of racial discrimination, and (2) your discharge was too severe. On 11 October 1977, the NDRB determined your request was proper as issued and denied your request.

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 to upgrade your discharge and contention that you incurred PTSD during military service. In addition, the Board considered your desire for Department of Veterans Affairs benefits. For purposes of clemency and equity consideration, the Board noted you did not provide supporting documentation describing post-service accomplishments or advocacy letters.

Based on your assertion that you incurred PTSD during military service, which might have mitigated your discharge character of service, a qualified mental health professional reviewed your request for correction to your record and provided the Board with 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. Post-service, he has received a diagnosis of PTSD that has been attributed to military service. Unfortunately, available records are not sufficiently detailed to establish a nexus with his misconduct, as his previous statements indicate he was either not guilty of UA, or the UA was due to personal stressors, such as caring for an ailing spouse. Additional records (e.g., 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, "based on the available evidence, it is my considered clinical opinion there is post-service evidence of a diagnosis of PTSD that may be attributed to military service. There is insufficient evidence his misconduct could be attributed to PTSD."

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

NJP and SPCM, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and found that your conduct showed a complete disregard for military authority and regulations. Further, the Board concurred with the AO that there is insufficient evidence that your misconduct may be attributed to PTSD. The Board also noted that there is no provision of federal law or in Navy/Marine Corps regulations that allows for a discharge to be automatically upgraded after a specified number of months or years. Additionally, absent a material error or injustice, the Board declined to summarily upgrade a discharge solely for the purpose of facilitating veterans' benefits, or enhancing educational or employment opportunities. Finally, the Board determined that you already received a large measure of clemency when you received a Presidential Pardon; 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 Sailor 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 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,

11/18/2022

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