



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. 2677-23
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 27 November 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). 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 12 October 2023. Although you were afforded an opportunity to submit a rebuttal, you chose not to do so.

The Board determined that your personal appearance, with or without counsel, would not materially add to their understanding of the issues involved. Therefore, the Board determined that a personal appearance was not necessary and considered your case based on the evidence of record.

During your enlistment processing, you disclosed minor traffic infractions and were granted an enlistment waiver. You enlisted in the U.S. Marine Corps and began a period of active service on 9 September 1980. On 6 July 1982, you received your first nonjudicial punishment (NJP) for

being in an unauthorized absence (UA) status from fire watch. On 8 January 1983, you received a second NJP for failing to obey a lawful order. Subsequently, you were convicted by Japanese authorities of robbery and violation of the firearm, swords, etc., possession control law on 24 October 1983 and sentenced to imprisonment for three years and six months. Consequently, you were notified of your pending administrative processing by reason of your civilian conviction, at which time you elected your right to consult with military counsel and to have your case heard before an administrative discharge board. On 22 December 1983, after waiving your previously elected right to have your case heard before an administrative discharge board your discharge was approved. Ultimately, you were discharged with an Other Than Honorable (OTH) characterization of service.

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 to upgrade your discharge and your contentions that: (1) you incurred PTSD and other mental health concerns from childhood physical and emotional abuse, which was exacerbated by witnessing a fatal vehicle accident during which you assisted in rescue operations, (2) you are in desperate need of certain benefits, (3) you are nearly deaf in your left ear and have tinnitus due to serving with artillery, (4) it has been 38 years, (5) you are still proud to have served your country, and (6) you think you have lived with this shame long enough. For purposes of clemency and equity consideration, the Board noted you provided a personal statement and medical documents.

Based on your assertions that you incurred PTSD and other mental health concerns during military service, which might have mitigated the circumstances of your separation, a qualified mental health professional reviewed your request for correction to your record and provided the Board with an 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 diagnoses of PTSD and other mental health concerns that are temporally remote to his military service and appear unrelated. While the Petitioner claims that childhood abuse and an in-service traumatic precipitant contributed to his misconduct, there is insufficient evidence to support his contentions, particularly as it is difficult to consider armed robbery as a symptom of PTSD. His misconduct is more consistent with his personality disorder diagnosis, rather than evidence of another mental health condition incurred in or exacerbated by military service. Additional records (e.g., post-service mental health records describing the Petitioner's diagnosis, symptoms, and their specific link to his misconduct) may aid in rendering an alternate opinion.

The AO concluded, "it is my 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 to attribute his misconduct to PTSD or another mental health condition."

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 civilian conviction, 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. Additionally, the Board agreed with the AO that there is insufficient evidence of a diagnosis of PTSD or another mental health condition that may be attributed to your military service or misconduct. The Board also considered the likely discrediting effect your civilian conviction had on the Navy. Further, 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. 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. While the Board carefully considered the evidence you submitted in mitigation, even in light of the Kurta, Hagel, and Wilkie Memos and reviewing the record liberally and 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. Ultimately, the Board concluded the mitigation evidence you provided was insufficient to outweigh the seriousness of your misconduct. 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 is attached 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,

12/5/2023

