

DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS 701 S. COURTHOUSE ROAD, SUITE 1001 ARLINGTON, VA 22204-2490

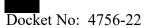
> Docket No: 4756-22 Ref: Signature Date

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 Board waived the statute of limitation 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 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 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, and applicable statutes, regulations, and policies, to include to 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) of a qualified mental health provider and licensed clinical psychologist which was previously provided to you. Although you were afforded an opportunity to submit a rebuttal, you chose not to do so.

You enlisted in the Navy and began a period of active duty on 6 July 1981, serving approximately 15 months without incident until receiving nonjudicial punishment (NJP) in September of 1982 for a violation of Article 92 due to dereliction of duty by sleeping on watch. Your evaluation reports in January and June of 1983 reflect that you were not recommended for advancement or retention, describing your total disregard for safety, lack of respect for others, poor hygiene, unkempt uniforms, frequent counseling to no avail, and reputation for avoiding work. In July of 1983, you received a second NJP for three specifications of violations of Article 86 due to unauthorized absences (UAs), two specifications of Article 91 for willfully disobeying a superior petty officer, and Article 108 for willfully damaged military property, after which you



received counseling warnings regarding the potential for administrative separation. In spite of informal counseling in December of 1983 for another UA, you proceeded thereafter with an ongoing pattern of UAs which resulted in three additional NJPs from January through April of 1984, the last of which included an additional Article 92 violation of a lawful general regulation for not maintaining a full seabag. After your sixth and final NJP, in July of 1984, for an Article 92 violation due to sleeping on watch, you were sent for a mental health evaluation which found no evidence of a psychotic or neurotic disorder. Based on your record of misconduct, you were notified of processing for administrative separation for a pattern of misconduct and, after consultation with counsel, elected a hearing before an administrative board. The administrative board later substantiated your misconduct and unanimously recommended your separation with a General (Under Honorable Conditions) characterization of service. The administrative board's recommendation was approved by Commander, Navy Personnel Command and you were discharged on 28 September 1984.

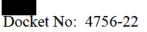
The Board carefully considered all potentially mitigating factors to determine whether the interests of justice warrant relief in your case in accordance with the Kurta, Hagel, and Wilkie Memos. These included, but were not limited to, your desire to upgrade your discharge and your contentions that you were injured while serving in Afghanistan and that your subsequent service in the Army National Guard with multiple Honorable discharges merits consideration for an upgraded characterization of service based on your post-discharge character. For purposes of clemency and equity consideration, the Board noted you provided supporting documentation describing post-service accomplishments but no advocacy letters.

Because you contend that post-traumatic stress disorder (PTSD) affected your discharge, the Board also considered 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. He has provided no medical evidence in support of his claims. Unfortunately, his personal statement is not sufficiently detailed to establish clinical symptoms or provide a nexus with his misconduct. Additional records (e.g., post-service 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, "it is my considered clinical opinion there is insufficient evidence of a diagnosis of PTSD that may be attributed to military service. There is insufficient evidence his misconduct could be attributed to PTSD."

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 six NJPs, 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 concurred with the AO that there is insufficient evidence your misconduct could be attributed to PTSD. Finally, while the Board noted your subsequent active and reserve periods of service and appreciates that you continued your military career honorably, the Board observed that the characterization of your Navy service is independent from your Army service. As a result, the



Board concluded significant negative aspects of your Navy service outweighed the positive aspects and continues to warrant a General (Under Honorable Conditions) 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 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,

11/9/2022