



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



Docket No: 5153-22
Ref: Signature Date



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 9 December 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). The Board also considered the advisory opinion (AO) furnished by a qualified mental health professional, which was previously provided to you. Although you were afforded an opportunity to submit an AO 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.

You enlisted in the U.S. Navy and began a period of active duty on 24 October 1988. On 6 April 1990, you received non-judicial punishment (NJP) for writing bad checks. Subsequently, you

were counseled regarding deficiencies in your performance and or conduct; may result in disciplinary action and processing for administrative separation. On 22 September 1990, you received your second NJP for making provoking speeches and or gestures. On 14 March 1991, you received your third NJP for failing to go to your appointed place of duty. Subsequently, you received your second counseling warning for your performance and further misconduct could result in administrative separation. You then received your fourth NJP, on 25 July 1991, for failure to obey an order on two separate occasions. Again you were counseled on your performance and further misconduct could result in administrative separation. On 7 November 1991, your reduction in rate punishment was vacated from your 25 July 1991 NJP. The following day, you received your fifth NJP for missing ships movement and 20 days unauthorized absence (UA).

You were notified of administrative separation processing for pattern of misconduct on 12 November 1991. You waived your right to consult with counsel and waived your right to an administrative board. Your CO recommended you be discharge with an Other Than Honorable (OTH) discharge and forwarded the recommendation to the separation authority on 4 November 1991. On 25 November 1991, the separation authority approved the recommendation and directed you be discharge. On 29 November 1991, you were discharged with an OTH.

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 was not limited, your request to upgrade your characterization of service and contentions you suffered from abuse from superiors while on active duty, suffer from service connected disability conditions, and were never offered assistance by the Navy. In addition, you argue that your post-discharge accomplishments warrant mitigation of your active duty misconduct. For purposes of clemency and equity consideration, the Board noted you provided a personal statement.

As part of the Board's review, a qualified mental health professional reviewed your request and provided the Board with an AO on 30 September 2022. The AO stated in pertinent part:

During military service, the Petitioner was diagnosed with situational depression and a personality disorder. He has provided no additional medical evidence of his claimed conditions. Unfortunately, his personal statement is not sufficiently detailed to establish clinical symptoms of PTSD or a nexus with all of his misconduct. It is possible that his September 1990 NJP could be attributed to irritability associated with the situational depression he had been experiencing at the time. It is difficult to attribute his financial mismanagement to a mental health condition. His other misconduct is consistent with the characterological features identified by the MO. Additional records (e.g., post-service mental health records describing the Petitioner's diagnosis, symptoms, and their specific link to his military service) would aid in rendering an alternate opinion.

The AO concluded, "it is my considered clinical opinion that there is insufficient evidence of a diagnosis of PTSD. There is evidence of another mental health condition that may be attributed

to military service. There is insufficient evidence all of his misconduct could be attributed to a mental health condition.”

After thorough review, the Board concluded that your potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined your misconduct as evidenced by your five NJPs, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the likely negative effect your conduct had on the good order and discipline of your command. Additionally, the Board concurred with the AO and determined that there is insufficient evidence of a diagnosis of PTSD that may be attributed to military service, and there is insufficient evidence all of your misconduct could be attributed to a mental health condition. As a result, the Board determined your conduct constituted a significant departure from that expected of a Sailor and continues to warrant an OTH. While the Board commends your post-discharge accomplishments and good character, 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 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,

12/20/2022

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Executive Director

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