



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: 5272-22
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 24 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). The Board also reviewed an advisory opinion (AO) from a qualified mental health professional and your responses to the AO.

You enlisted in the U.S. Navy and commenced a period of active duty on 21 July 1992. On 30 June 1994, you were identified as an alcohol abuser and recommended to attend Level II treatment. On 8 July 1994, you received your first nonjudicial punishment (NJP) for a period of unauthorized absence (UA), drunken or reckless driving, assault, and disorderly conduct, drunkenness. You were also issued an administrative counseling documenting the aforementioned deficiencies in your conduct and advising you that subsequent violation(s) of the Uniform Code of Military Justice (UCMJ) or conduct resulting in civilian conviction(s) could result in an administrative separation under Other Than Honorable (OTH) conditions.

On 27 February 1995, you were again counseled for being late for duty. On 3 April 1995, you received a second NJP for failure to obey order or regulation and making/uttering worthless checks. As a result, you were notified of your pending administrative separation due to commission of a serious offense (COSO), at which time you elected your right to consult with military counsel and to present your case before an administrative discharge board (ADB) hearing. On 5 May 1995, your case was heard before an ADB. The members unanimously determined you committed misconduct and recommended you be discharged from the Navy with an OTH characterization. After the separation authority approved the recommendation, on 26 July 1995, you were so discharged.

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 in order to obtain Department of Veterans Affairs benefits. In addition, you contend that you incurred PTSD and other mental health concerns during military service due to racial harassment and assault, that it was an error and injustice that the psychologist evaluation at the U.S. Naval Hospital in █, failed to diagnose, treat, and consider other specified trauma and stressor related disorders, and they failed to screen, assess, diagnose, or treat you for PTSD. For purposes of clemency and equity consideration, the Board noted you provided advocacy letters but no supporting documentation describing post-service accomplishments.

Based on your assertion that you incurred PTSD and other mental health concerns 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:

Petitioner was appropriately referred for psychological evaluation during his enlistment and properly evaluated. His in-service diagnosis of alcohol use disorder was based on observed behaviors and performance during his period of service, the information he chose to disclose, and the psychological evaluation performed by a mental health clinician. Problematic alcohol use is incompatible with military readiness and discipline and there is no evidence the Petitioner was unaware of the potential for misconduct when consuming alcohol or not responsible for his actions. Post-service, the VA has determined service connection for a trauma-related mental health condition, considering both his service record and his report. A civilian clinician has determined a diagnosis of PTSD in part due to military service, solely on the basis of the Petitioner's report. The Petitioner also provided evidence of treatment for other mental health conditions that do not appear to be related to military service. Unfortunately, the Petitioner's statement and available records (e.g., post-service mental health records describing 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 that there is insufficient evidence of a diagnosis of PTSD that may be attributed to military service. There is post-service evidence of a trauma-related mental health condition that may be attributed to military service. There is

insufficient evidence his misconduct could be attributed to PTSD or another mental health condition.”

In response to the AO, you submitted two statements that provided additional clarification of the circumstances of your case.

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 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. Further, the Board concurred with the AO that, while there is post-service evidence of a trauma-related mental health condition that may be attributed to military service, there is insufficient evidence that your misconduct may be attributed to PTSD or another mental health condition. The Board was not persuaded by your arguments that the Navy failed to properly diagnose or treat a mental health condition while you were on active duty. The Board noted you provided insufficient evidence to substantiate your contentions. Finally, 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 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,

11/9/2022

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Executive Director

Signed by: █