



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: 5464-22

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 18 November. 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 and your response to the AO.

You enlisted in the U.S Navy Reserve on 21 May 1987. You subsequently began a period of active duty on 10 February 1990 and served until 11 October 1991 when you were released to the Reserves with an Honorable discharge. On 25 October 1991, you agreed to remain a member of the Ready Reserve to fulfill your remaining obligation.

On 25 June 1993, you were sent notified of separation processing for failure to maintain satisfactory participation in the Ready Reserve. You failed to respond to the notification and your Commanding Officer (CO), on 10 August 1993, forwarded his recommendation to the Separation Authority (SA) recommending you be discharge with an Other Than Honorable

(OTH) discharge due to unsatisfactory participation in the Ready Reserve. The CO stated that you failed to respond to the notification of separation and that you were not considered a mobilization asset due to your failure to maintain satisfactory participation in the Ready Reserve since 6 December 1992. The SA approved your discharge and directed you be separated with an OTH. You were discharged on 7 September 1993.

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 was not limited, your request to upgrade your characterization of service and contention that you suffer from post-traumatic stress disorder (PTSD). You also contend that during your period of active duty service you deployed to the Iraqi war and suffered from stress from being away from your family. After returning from deployment, you filed for divorce and were not in a good place mentally. During this time, you began to suffer from severe migraines, sinusitis, and pain in your feet. As a result of personal issues related to your divorce and child support, you began to neglect your duty as a Sailor and began missing drills. You finally contend that you didn't know who to trust to help you and this led you to an OTH for lack of participation. For purposes of clemency consideration, the Board noted you did provide a personal statement but no supporting documentation describing post-service accomplishments or advocacy letters.

As part of the Board's review, a qualified mental health professional reviewed your request and provided the Board with an AO on 13 October 2022. 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. Post-service, he has received a diagnosis of PTSD that has been attributed to military service, and is based on his report. Unfortunately, available records are not sufficiently detailed to establish a nexus with his misconduct, as his diagnosis is temporally remote from his military service and there is insufficient information regarding symptoms to establish a nexus with his drill participation. 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 that 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 symptoms PTSD."

In response to the AO, you submitted additional information regarding the circumstances of your case.

After thorough review, the Board concluded that your potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined you did not fulfill your contractual military obligation by failing to report to duty. The Board relied upon your admission and record of missed drills in making this finding. Therefore, the Board concluded that your discharge was proper and equitable under standards of law and discipline and that the

discharge accurately reflects your conduct during your period of service, which was terminated by your separation with an OTH. 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 your misconduct could be attributed to PTSD. While the Board considered your arguments in mitigation, ultimately, the Board determined it was insufficient to overcome the seriousness of your misconduct. As a result, the Board determined your conduct constituted a significant departure from that expected of a Sailor and continues to warrant an OTH. 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,

12/5/2022

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Executive Director
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