



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. 5579-22
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 15 February 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). 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.

You enlisted in the U.S. Navy and began a period of active duty in 17 March 1986. On 26 February 1987, you received non-judicial punishment (NJP) for failure to obey a lawful written order and larceny. You were then counseled, on 23 June 1987, for larceny, unauthorized absence (UA), and failure to go to appointed place of duty. You were advised further deficiencies in performance and or conduct may result in disciplinary action and in processing for administrative separation. From 25 June 1987 until 3 December 1987, you received three NJPs for UAs and multiple specifications of failure to go to appointed place of duty. As a result,

you were notified for separation for pattern of misconduct and you elected an administrative discharge board (ADB). The ADB met on 9 January 1988 and recommended your discharge with an Other Than Honorable (OTH) characterization of service. Your Commanding Officer forwarded the ADB's recommendation to the Separation Authority (SA). The SA accepted the recommendation and directed you be discharged. Prior to your discharge, you received your fifth NJP for three days UA and escaping custody. You were so discharged on 6 May 1988.

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 and contentions that you want Veterans Affairs (VA) benefits for you and your family, your discharge was unjust, you love the Navy, you loved serving on the ██████████ but left shortly after the tragedy, and you would like to right a wrong for you and your family. For purposes of clemency and equity consideration, the Board noted did not provide 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 17 October 2022. The AO stated in pertinent part:

There is no evidence that the Petitioner was diagnosed with a mental health condition or PTSD in military service or that he exhibited any psychological symptoms or behavioral changes indicative of a mental health condition. Medical note dated 3 October 1987 indicates that a psychological evaluation revealed. "Negative for psychological or emotional problems," and no psychiatric diagnosis was given. The Petitioner provided no medical evidence in support of his claim. Unfortunately, his personal statement is lacking sufficient detail to establish clinical symptoms or provide a nexus with his misconduct in service. 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 mental health condition that may be attributed to military service. There is insufficient evidence that 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 that 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 found that your conduct showed a complete disregard for military authority and regulations. 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 mental health condition. Finally, the Board noted you provided no evidence to substantiate your contentions. 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 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 granting you the relief you requested or granting relief 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,

2/24/2023

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Executive Director

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