



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: 6395-22
7116-21
8872-17
10536-16
4962-99

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 limitations 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 12 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 service 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)/mental health condition (MHC) (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 an advisory opinion (AO) from a qualified mental health professional. 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.

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You previously applied to this Board for an upgrade to your characterization of service. You were denied relief on 6 October 1999, 17 May 2017, 5 February 2019, and 28 February 2022.

You enlisted in the Navy and began a period of active duty on 14 March 1977. On 17 August 1977, you received nonjudicial punishment (NJP) violating Uniform Code of Military Justice (UCMJ) Article 86, for three brief periods of unauthorized absence (UA). You did not appeal this NJP.

On 8 November 1978, you were convicted by special court-martial (SPCM) of possession of marijuana, and possession of marijuana with intent to distribute. You were sentenced to confinement at hard labor, forfeitures of pay, and reduction in rank. On 15 February 1979, your Top Secret security clearance was revoked due to your drug involvement.

On 13 April 1979, you received your second NJP for willful disobedience, disrespect, escaping from the custody from armed forces police, and causing a breach of peace. You did not appeal this NJP.

On 12 June 1979, you were convicted by general court-martial (GCM) of assault with a dangerous weapon. You were sentenced to confinement at hard labor, forfeitures of pay, and reduction in rank.

On 6 July 1979, you received your third NJP for willful disobedience of a lawful order. You did not appeal this NJP. On 14 September 1979, you were notified of administrative discharge action for misconduct due to frequent involvement of a discreditable nature with military authorities. You were advised of your procedural rights and you elected to waive your right to have your case heard before an administrative discharge board, and your case was forwarded to the separation authority. It was stated that you were had been counseled repeatedly on your conduct and attitude, that counseling sessions proved to be totally ineffective and there was no improvement in your military conduct. The Commanding Officer recommended your separation with an Other Than Honorable (OTH) discharge by reason of misconduct due to frequent involvement of a discreditable nature with military authorities.

Prior to your separation, you received your fourth and final NJP for brief period of UA on 27 September 1979. On 3 October 1979, the separation authority directed you receive and OTH discharge for misconduct due to frequent involvement. Ultimately, on 17 October 1979, you were discharged from the Navy with an OTH characterization of service

The Board carefully considered all potentially mitigating and/or extenuating 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: (a) your desire to upgrade your characterization of service, (b) your statement that you incurred PTSD from harassment and racism during your military service, (c) your contention that the charges against you were fabricated to protect other perpetrators, and (d) the stressful events occurring at the time of your service, to include your assertion that you incurred Hepatitis C from a contaminated blood

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transfusion. For purposes of clemency and equity consideration, the Board noted you submitted post-service medical treatment records, including documentation that you completed an intensive outpatient behavioral health treatment program for homeless veterans in September 2021 and documentation that the Department of Veterans Affairs diagnosed you with PTSD attributed to military service. The Board also considered your post-service educational achievements.

As part of the Board review process, the BCNR Physician Advisor who is a licensed clinical psychologist (Ph.D.), reviewed your contentions and the available records and issued an AO dated 18 October 2022. The Ph.D. noted in pertinent part:

During military service, the Petitioner was diagnosed with an alcohol use disorder. Problematic alcohol use is incompatible with military readiness and discipline and considered amenable to treatment, depending on the willingness of the individual. There is no evidence he was unaware of the potential for misconduct when consuming alcohol or not responsible for his behavior. Post-service, he has provided evidence of a diagnosis of PTSD that is temporally remote but has been attributed to his military service. He has provided post-service evidence of a diagnosis of depression that does not appear to be related to military service. Unfortunately, available records are not sufficiently detailed to provide a nexus between PTSD and his misconduct, particularly given his pre-service behavior which appears to have continued in service. Additional records (e.g., post-service mental health records describing the Petitioner's diagnosis, symptoms, and their specific link to his misconduct) may aid in rendering an alternate opinion.

The Ph.D. concluded, "it is my considered clinical opinion there is post-service evidence of a diagnosis of PTSD that may be attributed to military service. There is insufficient evidence of another 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."

After thorough review, the Board concluded the potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your four NJPs, SPCM, and GCM outweighed these mitigating factors. The Board considered the seriousness of your misconduct and the fact that it involved repeated misconduct that spanned your entire period of service. Further, the Board also considered the negative impact your conduct had on the good order and discipline of your command. The Board determined that repeated misconduct, especially when it involved illegal drug use, is contrary to the Navy core values and policy, renders such Sailor unfit for duty, and poses an unnecessary risk to the safety of fellow shipmates.

In addition, in accordance with the Kurta, Hagel, and Wilkie Memos, the Board gave liberal and special consideration to your record of service. In making its determination, the Board concurred with the AO that based on the preponderance of the evidence, while there is post-service evidence that you incurred PTSD during military service, there is insufficient evidence that your

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misconduct could be attributed to PTSD. The Board noted that your post-service diagnosis of PTSD is temporally remote but has been attributed to his military service. However, the Board agreed that the available records are not sufficiently detailed to provide a nexus between the diagnosed PTSD and your misconduct, particularly given your pre-service behavior which appears to have continued in service. Based on these factors, the Board concluded that your misconduct was not due to mental health-related symptoms. The Board found that your active duty misconduct was intentional and willful, that you were mentally responsible for your conduct, and that therefore you were rightfully held accountable for your actions. Finally, the Board noted that you did not provide any evidence to support your contention that you were discharged based on your request due to racism. Contrary to your assertion, the Board determined the evidence shows that you were involuntarily discharged based on your history of misconduct that included four NJPs, a SPCM conviction, and a GCM conviction. As a result, the Board determined your conduct constituted a significant departure from that expected of a Sailor and continues to warrant an OTH characterization. While the Board commends your post-discharge accomplishments, 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,

1/4/2023

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Executive Director

Signed by: █