



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: 6523-22

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 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.

You enlisted in the Navy and began a period of active duty on 29 July 2003. On 12 June 2004, you were hospitalized for an overdose of Excedrin, and you were diagnosed with adjustment disorder with depressed mood and malingering. Based on your diagnosis and prognosis, you were recommended for administrative separation processing. Subsequently, you were counseled regarding your performance deficiencies and notified assistance through your command was available, and notified further deficiencies in performance may result in the initiation of administrative separation proceedings.

On 1 July 2004, you received non-judicial punishment (NJP) for disrespect to a superior commissioned officer, and willfully disobeying a superior commissioned officer. Subsequently, a psychological evaluation was conducted on 16 August 2004 and reiterated the earlier recommendation for administrative separation processing. As a result, on 23 August 2004, you were notified of the initiation of administrative separation proceedings by reason of convenience of the government due to personality disorder and misconduct due to the commission of a serious offense. On the same day, you waived your right to consult with counsel. On 5 October 2004, the separation authority approved your discharge. Subsequently, on 14 October 2004, you were discharged with an Other Than Honorable (OTH) character of service by reason of misconduct due to the commission of a serious offense.

You previously applied to the Naval Discharge Review Board (NDRB) with request to adjust your record. The NDRB denied your request to upgrade your character of service, on 9 December 2010, after concluding your discharge was proper as issued.

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 for a discharge upgrade and contentions that you are full disability for multiple conditions, these conditions create a challenge to you as a single father, you have positive post service conduct, and you desire to provide a better life for your son. For purposes of clemency and equity consideration, the Board noted you submitted correspondence from the social security administration.

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 evidence that the Petitioner was diagnosed in service following psychological evaluation by the ship psychologist. He was diagnosed with both an Adjustment Disorder and a Personality Disorder. Both diagnoses were explained as given him due to his behaviors observed ship-board as well as to comments that he made, rather than to any specific mental health symptoms observed or verbalized as having been experienced by the Petitioner. [Military Medical Provider] indicated that the Petitioner's behaviors were due to secondary gain of exiting himself from the ship. The Petitioner submitted a benefit letter from the Social Security Administration, however there is no mention of any mental health condition/s contained within this letter. Unfortunately, the Petitioner's 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 his misconduct could be attributed to a mental health condition."

After thorough review, the Board concluded your potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your NJP, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and concluded your misconduct showed a complete disregard for military authority and regulations. The Board also considered the likely negative impact your conduct had on the good order and discipline of your unit. Additionally, the Board concurred with the AO that there is insufficient evidence of a MH diagnosis that may be attributed to military service, and there is insufficient evidence your misconduct could be attributed to a MH diagnosis. The Board also noted that there is no provision of federal law or in Navy/Marine Corps regulations that allows for a discharge to be automatically upgraded after a specified number of months or years. 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 determined your conduct constituted a significant departure from that expected of a Sailor and continues to warrant an OTH characterization. While the Board empathizes with your current medical condition and desire to offer a better life for your family, 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,

