



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. 6555-22

Ref: Signature Date



Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to Title 10, United States Code, Section 1552. 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 Board waived the statute of limitation 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 6 March 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 the 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, 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 and your response to the AO.

You enlisted in the Navy and began a period of active duty on 6 July 1976. On 13 April 1977, you received your first of three nonjudicial punishments (NJPs) for the possession of an unauthorized identification card. You received your second NJP, on 7 June 1977, for disobeying a lawful order and for being disrespectful in language. On 8 February 1978, you were found guilty at a special court-martial (SPCM) of two specifications of unauthorized absence (UA) totaling 93 days. You were sentenced to confinement at hard labor for 45 days, to forfeitures of \$50.00 pay per month for four months, and to be reduced in rank to E-1. In June 1978, you received your third NJP for being disrespectful in language.

On 8 June 1978, you were diagnosed with moderate to severe pseudofolliculitis and recommended for an administrative discharge. As a result, you were notified of administrative separation processing by reason of convenience of the government due to a physical condition not considered a physical disability, at which time you waived your right to consult with counsel or have your case heard before an administrative discharge board. On 28 June 1978, you were counseled for your substandard performance of military duties, poor attitude, unsat appearance, and general lack of value to the Marine Corps. After your separation was approved, on 7 August 1978, you were discharged with a General (Under Honorable Conditions) characterization of service by reason of convenience of the government due to a medical condition not considered a physical disability. Your final conduct and proficiency trait averages were 3.3/3.8, respectively.

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 and your contentions that you incurred mental health concerns from reprisal during military service, you had a fight with a skinhead/white supremacist, and you were told you could not be protected from bodily harm or death. For purposes of clemency and equity consideration, the Board noted you did not provide documentation describing post-service accomplishments or advocacy letters.

Based on your assertions that you incurred mental health concerns (MHC) during military service, which might have mitigated the circumstances surrounding your separation from 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:

There is no evidence 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 in service. He has provided no medical evidence in support of his claims. Unfortunately, available records are not sufficiently detailed to establish clinical symptoms in service or a nexus with his misconduct. 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 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."

On 12 January 2023, the Board received your rebuttal in response to the AO in the form of a personal statement.

After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your three NJPs and SPCM, 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, a conduct average of 4.0 was required at the time of your separation for a fully Honorable characterization of service. Based on your conduct average of 3.3, the Board found you did not qualify for an Honorable

characterization of service. Further, the Board concurred with the AO that there is insufficient evidence of a mental health condition that may be attributed to your military service or your misconduct. Finally, the Board noted that you provided no evidence to substantiate your contentions. As a result, the Board concluded significant negative aspects of your service outweighed the positive aspects and continues to warrant a General (Under Honorable Conditions) characterization. While the Board carefully considered the evidence you submitted in mitigation, 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. Ultimately, the Board concluded the mitigation evidence you provided was insufficient to outweigh the seriousness of your misconduct. 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 the 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 is attached 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,

3/21/2023

