



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. 6568-22
Ref: Signature Date

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Dear █

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 12 April 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 and your response to the AO.

You enlisted in the Navy and began a period of active duty on 5 March 1957. You completed this enlistment with an Honorable characterization of service on 19 January 1961. On 11 May 1962, you reenlisted and later completed this enlistment, on 28 March 1966, with an Honorable characterization of service. You again reenlisted and immediately commenced a third period of active duty.

On 22 September 1966, you were convicted by a special court-martial (SPCM) of unauthorized absence (UA), a period totaling 109 days. As punishment, you were sentenced to restriction, forfeiture of pay, and reduction in rank. On 23 March 1967, were again convicted by a SPCM of

UA, for a period totaling 115 days. As punishment, you were sentenced to confinement, forfeiture of pay, and reduction in rank.

On 25 April 1967, you were evaluated and diagnosed with passive aggressive personality disorder. On 14 December 1967, you were convicted for a third time by a SPCM. Your offenses were UA, for a period totaling 136 days, and failure to obey a lawful written order. As punishment, you were sentenced to confinement, forfeiture of pay, and a Bad Conduct Discharge (BCD). The BCD was subsequently approved at all levels of review and, on 19 March 1968, you were so discharged.

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 contention that you experienced early childhood abandonment, which triggered emotional concerns when your spouse disappeared with your daughters, while you were in the Navy. You contend these resulted in your UA. For purposes of clemency and equity consideration, the Board considered the evidence you submitted in support of your application.

As part of the Board's review, a qualified mental health professional reviewed your request and provided the Board with an AO on 23 February 2023. The AO stated in pertinent part:

Petitioner was appropriately referred for psychological evaluation during his enlistment and properly evaluated on more than one occasion. His personality disorder diagnosis was based on observed behaviors and performance during his period of service, the information he chose to disclose, and the psychological evaluation performed by the mental health clinician. A personality disorder diagnosis is pre-existing to military service by definition, and indicates lifelong characterological traits unsuitable for military service. Post-service, a civilian physician has identified potential brain trauma that is temporally remote to military service that he considers may be related to military service. Unfortunately, there is no evidence of symptoms of TBI in service and there is insufficient evidence to attribute his misconduct to potential TBI, given the chronic nature of his misconduct over a significant period. Additionally, there is insufficient evidence to attribute his misconduct to a mental health condition incurred in or exacerbated by military service, given the lack of available records and his statements in service that his UA was to search for his family. 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 post-service evidence from a civilian provider of TBI that may be attributed to military service. There is insufficient evidence his misconduct could be attributed to TBI or another mental health condition."

In response to the AO, you provided new supporting documentation that supplied additional clarification of the circumstances of your case. After reviewing your evidence, the AO remained unchanged.

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 SPCM convictions, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and concluded that it showed a complete disregard of military authority and regulations. The Board also considered the negative impact your conduct likely had on the good order and discipline of your command. Furthermore, the Board concurred with the AO that while there is post-service evidence from a civilian provider of TBI that may be attributed to military service, there is insufficient evidence your misconduct could be attributed to TBI or another mental health condition. As the AO noted, there is no evidence of symptoms of TBI in service, there is insufficient evidence to attribute your misconduct to potential TBI, given the chronic nature of your misconduct over a significant period, and there is insufficient evidence to attribute your misconduct to a mental health condition incurred in or exacerbated by military service. Therefore, the Board determined that the evidence of record did not demonstrate that you were not mentally responsible for your conduct or that you should otherwise not be held accountable for your actions. As a result, the Board concluded your conduct constituted a significant departure from that expected of a service member and continues to warrant a BCD. 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.

Be advised, the Board noted that because of your prior Honorable periods of service, you may be eligible for veterans' benefits. However, your eligibility is a matter under the cognizance of the Department of Veteran Affairs (VA). In this regard, you should contact the nearest VA office concerning your rights, specifically, whether or not you are eligible for benefits based on these periods of service.

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,

4/26/2023

