



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. 6883-22
Ref: Signature Date

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Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to 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 3 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 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, and applicable statutes, regulations, and policies, to include to 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) of a qualified mental health provider and licensed clinical psychologist which was previously provided to you. You were afforded an opportunity to submit a rebuttal, but did not.

The Board determined that your personal appearance, with or without counsel, would not materially add to the understanding of the issues involved. Therefore, the Board determined a personal appearance was not necessary and considered your case based on evidence of record.

You enlisted in the Navy and began a period of active duty on 20 November 1990. You had a pre-service civil arrest record for assault which you failed to disclose but were retained in spite of your fraudulent entry. On 18 January 1991, you received a Navy League Award for being an outstanding recruit. You served without incident for the next year until you were counseled on

19 February 1992 for being delinquent in your general damage control professional qualifications and for failing your damage control exam. You were subject to nonjudicial punishment (NJP) on 19 June 1992 due to violations of Article 116, for breach of the peace, and Article 128, for three specifications of assault. Following this incident, you absented yourself without leave for more than 4 months until surrendering to military authority, after which time you requested voluntary separation in lieu of trial by court-martial. Your request was approved, and you were discharged on 13 December 2022 under other than honorable conditions.

The Board carefully weighed all potentially mitigating factors, to include your desire to upgrade your discharge, change your behavioral status, and seek relief for your benefit status, as well as your contentions that you served honorably and were an outstanding recruit but suffered mistreatment after you began studying Islamic religion. You assert that this decision was unpopular with shipmates, who you allege defiled your bunk and planned to throw you overboard, leading to your NJP charges. You also state you were ordered to undergo a psychiatric evaluation but, instead, absented yourself without leave for fear of your life. Further, you allege your lawyers advised you to request separation in lieu of trial as a better option than a confinement, which you consider to be "abuse." Finally, because you contend that post-traumatic stress disorder (PTSD) or another mental health condition affected your discharge due to the harassment you received, the Board considered the AO, which noted that no concerns were raised for your mental health which might have warranted referral were raised throughout your disciplinary proceedings, by you, counsel, or command leadership. The AO found insufficient evidence of a diagnosis of PTSD or other mental health condition during your military service to which your misconduct might be attributed. The Board concurred with the AO regarding overall the lack of evidence supporting your contention that PTSD or mental health contributed to your misconduct. Although the Board noted that you also contend post-discharge character in that you have served your community by working in public utilities in the years since your discharge, the Board concluded that the potentially favorable factors you submitted for consideration are insufficient to outweigh your misconduct evidenced by your NJP for assault and separation in lieu of trial for an unauthorized absence in excess of 90 days. Accordingly, the Board determined that your request does not warrant 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,

2/22/2023

[REDACTED]

Executive Director

Signed by: [REDACTED]