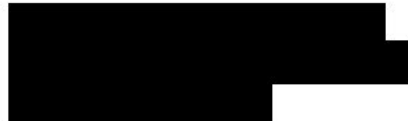




DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
701 S. COURTHOUSE ROAD, SUITE 1001
ARLINGTON, VA 22204-2490

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Docket No: 6903-22
1983-97
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 19 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 provided an opportunity to comment on the AO, 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.

You previously petitioned the Navy Discharge Review Board and were denied relief on 28 January 1993. You also submitted a request to this Board and were similarly denied relief on 30 September 1997.

You enlisted in the United States Navy and commenced a period of service on 25 January 1989. On 14 September 1989, you received non-judicial punishment (NJP) for violation of Uniform Code of Military Justice (UCMJ) Article 86, for a 1 day period of unauthorized absence (UA). You were administratively counseled and put on notice that further deficiencies in your performance or conduct could result in administrative or disciplinary measures. You did not appeal this NJP.

On 29 December 1989, you were UA from your command and remained so until 10 January 1990. You then went UA again from 18 January 1990 until 19 February 1990, when you were returned to military custody. On 7 March 1990, you were found guilty at Summary Court Martial (SCM) of violating UCMJ Article 86, for a 44 day period of UA, and Article 87, for missing ship's movement.

On 9 March 1990, you were notified that you were being processed for an administrative discharge by reason of misconduct due to commission of a serious offense. You waived your right to consult with qualified counsel and your right to present your case at an administrative separation board. On 20 March 1990, you underwent a separation physical and did not raise any mental health concerns. You were discharged from the Navy, on 27 March 1990, with an Other Than Honorable (OTH) characterization of service by reason of misconduct and assigned an RE-4 reentry code.

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 and change your reentry code, (b) your contention that you suffered from undiagnosed PTSD during your service, (c) the impact of your mental health on your conduct, (d) your assertion that you went UA to avoid discrimination, and (e) your contention that you were lied to by your legal officer about your post-service benefits. For purposes of clemency and equity consideration, the Board noted that you provided documentation related to your post-service accomplishments and character.

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 8 November 2022. The Ph.D. noted in pertinent part:

The Petitioner contends that he suffered from undiagnosed PTSD while in service which may have mitigated the circumstances of his discharge. He submitted disability ratings from the Department of Veterans Affairs which notes service connection for medical conditions, but no mental health conditions. He submitted paperwork from Disability Determination Services and other medical notes that pertain only to orthopedic concerns. He submitted one psychiatric evaluation from █ where an intake assessment was conducted, but no diagnoses are contained therein. He also submitted post-service accomplishments as evidence for his claim. There is no evidence that 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. Throughout his administrative processing, he did not mention any

mental health concerns. His Commanding Officer wrote, "Member absented himself from this command with the express intent of getting discharged from the Naval Service...despite being counselled, he has remained steadfast in his desire to be discharged and has indicated that he will do whatever it takes to get out of the Navy..." Unfortunately, his personal statement is not sufficiently detailed to establish clinical symptoms or provide 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) would aid in rendering an alternate opinion.

The Ph.D. 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 that his misconduct could be attributed to a mental health condition."

After thorough review, the Board concluded the potentially mitigating factors were insufficient to warrant relief. The Board concluded that your misconduct, as evidenced by your NJP and SCM, outweighed these mitigating factors. In accordance with the Kurta, Hagel, and Wilkie Memos, the Board gave liberal and special consideration to your record of service and the stressful events occurring your life that impacted your mental health during service. The Board considered the seriousness of your repeated misconduct and the fact that it involved significant periods of UA. Further, the Board also considered the likely negative impact your conduct had on the good order and discipline of your command and on mission readiness. The Board determined that your conduct was contrary to Navy core values and policy.

In making this determination, the Board concurred with the advisory opinion that there is no evidence that you were diagnosed with a mental health condition in military service, or that you exhibited any psychological symptoms or behavioral changes indicative of a diagnosable mental health condition. You did not report any issues on your separation physical, nor did you raise any mental health claims during the disciplinary and separation process. You submitted post-service medical documents from the Department of Veterans Affairs, Disability Determination Services, and other medical treatments that note service connection for some medical conditions, but none of the conditions were related to mental health conditions. You submitted one psychiatric evaluation from █ where an intake assessment was conducted, but no diagnoses are contained therein. Evidence to the contrary was found in your Commanding Officer's endorsement, in which he states, "Member absented himself from this command with the express intent of getting discharged from the Naval Service...despite being counselled, he has remained steadfast in his desire to be discharged and has indicated that he will do whatever it takes to get out of the Navy...". The Board felt that this demonstrated that your active duty misconduct was intentional and willful, that you were well informed about the ramifications of an unfavorable discharge, and that you were unfit for further service. 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 of service.

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,

1/13/2023

