



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

█
Docket No. 7513-22
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 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 your response to the AO.

You enlisted in the Navy and began a period of active duty on 1 July 2001. Subsequently, you served aboard the █ during an expeditionary deployment in support of the Global War on Terror. On 7 May 2003, there was an explosion in the Marines' berthing area onboard the ship when an explosion in a trash receptacle injured 11 Marines. Most injuries were minor and treated by ship's medical, although one required medical evacuation for an arm injury. Your ship returned from deployment on 29 December 2004, at which time you were transferred to the Transient Personnel Unit, pending charges. You requested voluntary separation in lieu of trial by court-martial, which was approved. As a result, you were discharged on 1 February 2005 under Other Than Honorable (OTH) conditions.

You previously applied to the Naval Discharge Review Board (NDRB), which considered your request on 10 September 2020, wherein you sought an upgrade of your discharge to permit receipt of benefits and medical treatment. You contended that your discharge was inequitable because you were dealing with serious family issues and because you suffered from post-traumatic stress disorder (PTSD). The NDRB denied your request after determining 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 to upgrade your discharge and your contentions that you served in ██████████ at a time of war and suffer PTSD due to your experience in assisting pulling out three of the Marines who were hit by the explosion in their berthing as well as your discovery of the body of another airman who you purport had hung himself in the hanger bay. For purposes of clemency and equity consideration, the Board noted you provided a personal statement and medical evidence but no supporting documentation describing post-service accomplishments or advocacy letters.

Because you contend that PTSD affected your discharge, the Board also considered the AO. The AO stated in pertinent part:

The Petitioner contends that he suffered from undiagnosed PTSD from events that occurred as a result of his deployment while stationed on board the ██████████. Specifically, he indicated that he aided in “pulling out 14 Marines when there was an explosion on the ██████████.” He did submit a very brief letter from ██████████ Healthcare that stated he was being treated for PTSD related to military service while incarcerated at ██████████. 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. Unfortunately, neither his personal statement nor the letter from ██████████ are 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 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 that his misconduct could be attributed to a mental health condition.”

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 request to be discharged in lieu of court-martial, 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. In addition, the Board concurred with the AO that there was insufficient evidence that your misconduct could be attributed to a mental health condition. Finally, the Board determined that you already received a large measure of clemency when the convening authority agreed to administratively separate you in lieu of trial by court-martial; thereby sparing you the stigma of a court-martial conviction

and possible punitive discharge. As a result, the Board concluded your conduct constituted a significant departure from that expected of a service member and continues to warrant an OTH 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,

2/22/2023

