



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. 7882-22
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 1 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 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, which was previously provided to you. Although you were afforded an opportunity to submit an AO rebuttal, you chose not to do so.

You enlisted in the Navy and began a period of active duty on 14 July 1986. On 18 January 1988, you commenced a period of unauthorized absence (UA). During your period of UA, you missed ship's movement. On 18 February 1988, your UA period concluded upon your surrender to military authorities, totaling 31 days. On 4 April 1988, you were convicted by a special court-martial (SPCM) of UA and missing ship's movement. As punishment, you were sentenced to confinement, forfeiture of pay and reduction in rank. On 11 April 1988, you were notified that you were being recommended for administrative discharge from the Navy by reason of

misconduct due to commission of a serious offense. You were advised of, and elected your procedural right to consult with military counsel; however, you waived your right to present your case to an administrative discharge board (ADB). Your commanding officer then forwarded your administrative separation package to the separation authority recommending your administrative discharge from the Navy with an Other Than Honorable (OTH) characterization of service. The Chief of Naval Personnel recommended to the Assistant Secretary of the Navy for Manpower and Reserve Affairs (ASN (M&RA)) that you be discharged from the Navy with an OTH characterization of service. The ASN (M&RA) approved the recommendation for your administrative discharge from the Navy and, on 6 July 1988, you were discharged from the Navy with an OTH characterization of service by reason of misconduct due to commission of a serious offense.

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 change your discharge character of service and contentions that you suffered from undiagnosed mental health issues related to family stressors and you went UA in order to financially assist your mother. For purposes of clemency and equity consideration, the Board noted you provided advocacy letters and certificates describing post-service accomplishments.

As part of the Board's review, a qualified mental health professional reviewed your request and provided the Board with an AO on 17 January 2023. The AO noted in pertinent part:

The Petitioner contends that he suffered from undiagnosed mental health issues related to family stressors which caused him to go UA. He submitted several character references, post service accomplishments and post-service work evaluations. He also submitted a letter dated December 7, 2022 from [REDACTED] the Marriage and Family Therapist who wrote the letter indicated that he had been treating the Petitioner for anxiety and depression which he opined was also present when the Petitioner was serving in the Navy. 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. The letter submitted from [REDACTED] is temporally remote to service, and 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 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 your potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your SPCM conviction, outweighed these mitigating factors. In making this finding, the Board

considered the seriousness of your misconduct and concluded your misconduct showed a complete disregard for military authority and regulations. The Board also considered the likely negative impact your conduct had on the good order and discipline of your command. Further, the Board concurred with the AO that there is insufficient evidence of a mental health condition that may be attributed to military service, and there is insufficient evidence that your misconduct could be attributed to a mental health condition. As the AO noted, 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. Additionally, your submitted documentation in support of your assertion of a mental health condition is temporally remote to service, and not sufficiently detailed to establish clinical symptoms or provide a nexus with your misconduct. Finally, 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 an OTH characterization. While the Board commends your post-service accomplishments conduct, 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. Accordingly, given the totality of the circumstances, the Board determined 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,

3/13/2023

