



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. 7987-22
Ref: Signature Date

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Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to 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 23 February 2023. The names and votes of the members of the panel 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, 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).

A review of your record shows that you enlisted in the Navy and entered active duty on 4 March 1976. On 5 December 1977, you accepted non-judicial punishment (NJP) imposed by your Commanding Officer (CO) for violating Article 86 (Unauthorized Absence (UA)) of the Uniform Code of Military Justice (UCMJ) for being UA from 28 to 30 November 1977. On 11 May 1978, you were convicted by summary court-martial for being UA from 1 to 20 March 1978 and 27 March to 9 April 1978. You subsequently had 12 more instances of UA from June 1978 to May 1981. Ultimately, you were discharged from Navy on 6 August 1981 with an Other Than Honorable (OTH) characterization of service after submitting a request to be discharged in lieu of trial by court-martial.

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 for a discharge upgrade or disability discharge and contentions that you deserve a medical discharge because during your second term of service you fell ill, were hospitalized for four months, and diagnosed with paranoid schizophrenia. You further claim that you received medical discharge paperwork but your attorney did not behave professionally causing your OTH discharge. For purposes of clemency and equity consideration, the Board noted you did not provide documentation describing post-service accomplishments or advocacy letters.

On 27 October 2022, the Board sent you notice that your application for correction did not include adequate documentation to support your claim of PTSD or mental health diagnosis or treatment. Further, the Board notified you that your case was placed on administrative hold for forty-five days in order to provide you an opportunity to submit any additional evidence or documentation. Finally, the Board informed you that after forty-five days your case would be processed, even without additional evidence. The Board did not receive any additional information from you.

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 NJP, Summary court-martial, and request to be discharge in lieu of trial by 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. Further, the Board was not persuaded by your arguments of a mental health condition based on a lack of evidence. While the Board found that you were diagnosed with alcoholism during your active duty service, they found no evidence of a mental health diagnosis in-service. Finally, the Board noted you provided no evidence to substantiate your contentions. 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. 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.

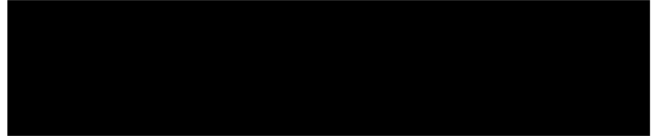
Regarding your request for a disability discharge, as previously discussed, the Board found no evidence that you suffered from a mental health condition incurred or aggravated as a result of your active duty service. Regardless, even if such evidence existed, the Board determined you were ineligible for disability processing since service regulations directed misconduct processing to supersede disability processing. Therefore, the Board determined your discharge was proper as issued. 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, _____

3/11/2023



Executive Director

