



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. 8146-22
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 12 May 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 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, which was previously provided to you. Although you were afforded an opportunity to submit a rebuttal, you chose not to do so.

You enlisted in the Navy and began a period of active duty on 12 September 1989. You served for over a year and a half without incident but had an unauthorized absence (UA) from 14 – 15 June 1991. You were subject to nonjudicial punishment (NJP) on 9 July 1991 for two violations of Article 86, UA, and violation of Article 91, for disobeying an order from a petty officer. You were administratively counseled that you were being retained but warned that continued misconduct could result in administrative separation.

You subsequently absented yourself without authority again from 8 September 1991 – 31 October 1991. After your surrender to military authority, you were tried by Summary Court-

Martial (SCM) for another violation of Article 86 for your extended UA and another violation of Article 92 for dereliction of duty by failing to remain awake while on duty as security watch.

As a result of your misconduct, you were notified, on 7 January 1992, of processing for administrative separation by reason of misconduct due to commission of a serious offense and elected to waive your right to a hearing before an administrative separation board without consulting legal counsel. The recommendation for your discharge under Other Than Honorable (OTH) conditions was forwarded to the Bureau of Naval Personnel (BUPERS). After your discharge was approved, you were discharged, on 23 February 1992, under OTH conditions for 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 upgrade your discharge and your contentions that you experienced “disturbing encounters” during your deployment in support of ██████████ which you believe resulted in post-traumatic stress disorder (PTSD). You claim to have since been diagnosed with PTSD and believe that your altered mental state caused the actions leading to your disciplinary problems and discharge, because your behavior during your military service was not a reflection of who you really are, although you also state that your PTSD still currently affects your daily life. For purposes of clemency and equity consideration, the Board noted you did not provide documentation describing post-service accomplishments or advocacy letters.

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

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 disciplinary processing, there were no concerns raised of a mental health condition that would have warranted a referral for evaluation. He has provided no medical evidence in support of his claims. Unfortunately, his personal statement is not sufficiently detailed to establish clinical symptoms in service 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) may aid in rendering an alternate opinion.

The AO concluded, “it is my clinical opinion there is insufficient evidence of a diagnosis of PTSD that may be attributed to military service. There is insufficient evidence to attribute his misconduct to PTSD.”

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 and SCM, 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 concurred with the AO that there is insufficient evidence to attribute your misconduct to PTSD and the lack of evidence supporting your contention of PTSD. 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 liberally and 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 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,

5/22/2023

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Executive Director

Signed by: █