



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. 8195-22
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 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 24 April 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 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 and your response to the AO.

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 enlisted in the United States Navy and commenced a period of service on 10 September 1987. On 13 July 1989, you received non-judicial punishment (NJP) for violation of Uniform Code of Military Justice (UCMJ) Article 86, for a nine day period of unauthorized absence (UA). On 24 August 1989, you received your second NJP for violating UCMJ Article 92, for failure to obey a lawful order, and Article 90, for willfully disobeying a superior commissioned officer, and Article 134, for disorderly conduct. On 16 September 1989, you received your third NJP for violating UCMJ Article 92, for failure to obey a lawful order or regulation, and Article 113, for misbehavior as a sentinel on lookout. You did not appeal any of these NJPs.

On 22 September 1989, your command initiated administrative separation proceedings by reason of misconduct due to commission of a serious offense and pattern of misconduct. You waived your right to consult with qualified counsel and your right to an administrative separation board. Prior to your separation, you were medically evaluated and denied mental health symptoms, reporting to be “in good health.” On 26 October 1989, you were discharged from the Navy with an Other than Honorable (OTH) characterization of service and assigned an RE-4 reenlistment 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, (b) your contention that you were struggling with undiagnosed mental health issues, and (c) the impact that your mental health had on your conduct during service. For purposes of clemency and equity consideration, the Board noted that you did not provide documentation related to your post-service accomplishments or advocacy letters.

In your request for relief, you claim that you incurred Post Traumatic Stress Disorder (PTSD), anxiety, and depression due to the racial discrimination and harassment that you suffered while on active duty. You submitted a letter from the Retreat of Atlanta, dated 11 September 2022, which indicates that you self-admitted for detox in August 2022. The letter also indicates that you were diagnosed with PTSD and Major Depressive Disorder while an inpatient at their facility. 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 3 February 2023. The Ph.D. noted in pertinent part:

The Petitioner submitted a letter from the Retreat of Atlanta dated September 11, 2022 which indicates that he self-admitted for detox in August 2022. The letter also indicates that he was diagnosed with PTSD and Major Depressive Disorder (MDD) while an inpatient at their facility. The letter is temporally remote to service, does not indicate what substance or substances he was being treated for, and does not mention the etiology/rationale for his diagnoses of PTSD and/or MDD. 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, 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.”

In response to the AO, you submitted a personal statement supporting your contentions and expressing a willingness to take a polygraph test.

After thorough review, the Board concluded the potentially mitigating factors were insufficient to warrant relief. In accordance with the Kurta, Hagel, and Wilkie Memos, the Board gave liberal and special consideration to your record of service, and your contentions about mental health and the

possible adverse impact your mental health had on your conduct during service. Specifically, the Board felt that your misconduct, as evidenced by your three NJPs, outweighed these mitigating factors. The Board considered the seriousness of your misconduct and the fact that it involved a significant period of UA and repeated failure to obey orders. Further, the Board also considered the likely negative impact your conduct had on the good order and discipline of your command. The Board determined that such misconduct is contrary to the Navy's core values and policy, renders such Sailor unfit for duty, and poses an unnecessary risk to the safety of fellow service members.

In making this determination, the Board concurred with the AO that there is insufficient evidence that you have been diagnosed with a service-connected mental health condition, that you suffered from any type of mental health condition while on active duty, or that any such mental health condition was related to or mitigated the misconduct that formed the basis of your discharge. The Board agreed that the post-service medical evidence that you provided is temporally remote to your service and does not mention the etiology or rationale for your diagnoses of PTSD and/or MDD. Further, throughout the disciplinary process, you did not raise any concerns related to mental health that would have warranted a referral for evaluation. In fact, on your separation physical, you denied any mental health issues and reported to be in good health. Therefore, the Board concluded that your misconduct was not due to mental health-related symptoms, rather, was intentional and demonstrated 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.

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 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,

4/27/2023

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Deputy Director

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