



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

██████████
Docket No. 8654-22
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 24 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 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 and your response to the AO.

The Board determined that your personal appearance, with or without counsel, would not materially add to the understanding of the issues involved. Therefore, the Board determined a personal appearance was not necessary and considered your case based on evidence of record.

You enlisted in the Marine Corps as a minor with guardian consent and began a period of active duty on 29 August 1973. During your student training in July of 1974, you were counseled on being granted an exemption through Drug Abuse Exemption Program for polydrug use. However, due to this problem in conjunction with your failing academic status, you were disenrolled from student training on 29 July 1974.

You absented yourself without authority on 13 September 1974 and surrendered to civil authorities on 8 October 1974, after which you were returned to military control and subject to nonjudicial punishment (NJP) for a violation of Article 86 of the Uniform Code of Military Justice for unauthorized absence (UA). You appealed your punishment of 30 days correctional custody on the basis of mental health concerns. On 19 January 1975, you were apprehended by civil authorities on charges of breaking and entering. While in custody, you attempted suicide on 25 January 1975, for which the medical note addressed that you reported history of homosexual behavior and that you purported to hear “hysterical” voices and auditory hallucinations. The psychiatrist recommended discharge due to unfitness if your homosexual behavior was substantiated.

You were convicted, on 5 March 1975, by civil authorities for breaking and entering, for which you were sentenced to 12 months’ confinement with a scheduled release date of 19 September 1975. During your incarceration, your command forwarded a recommendation for your administrative discharge for misconduct due to civil conviction. However, this recommendation was disapproved and you sought assistance through your elected official in seeking assistance with your discharge. Following your release from civil confinement and return to military authority, you again absented yourself without authority, on 10 November 1975, until you finally surrendered on 31 December 1975, facing an additional charge of UA. Subsequently, you requested voluntary separation in lieu of trial (SILT) for the good of the service, acknowledging that your characterization of service would likely be under Other Than Honorable (OTH) conditions. Your request was approved, and you were discharged, on 27 February 1976, to escape trial by courts-martial.

In a previous request for review by the Naval Discharge Review Board (NDRB), which was considered on 2 December 1980, you contended that your youth and immaturity had impaired your ability to serve.

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 suffered from post-traumatic stress disorder during your military service due to pre-service traumas resulting from the death of both of your parents, you lack common sense, and that ongoing pay issues affected your mental state and behavior because you were left without sufficient funds even for necessary minor expenses such as a hair-cut. For purposes of clemency and equity consideration, the Board considered your evidence of post-discharge character that included evidence that you have been trained through the Department of Labor as an electrical master craftsman as well as multiple certifications in emergency services and disaster relief.

Because you contend that post-traumatic stress disorder (PTSD) affected the circumstances of your discharge, the Board also considered the AO. The AO stated in pertinent part:

Petitioner was appropriately referred for psychological evaluation and properly evaluated during his enlistment. His personality disorder diagnosis was based on observed behaviors and performance during his period of service, the information he chose to disclose, and the psychological evaluations performed by the mental health clinicians. A personality disorder diagnosis is pre-existing to military

service by definition, and indicates lifelong characterological traits unsuitable for military service. He was also diagnosed with situational reactions, which suggest temporary mental health concerns that would likely resolve following release from military service. Unfortunately, he has provided no medical evidence to support his claims of PTSD. His in-service misconduct appears to be consistent with his diagnosed personality disorder, rather than evidence of PTSD or another mental health condition incurred in or exacerbated by military service. 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 clinical opinion there is insufficient evidence of a diagnosis of PTSD that may be attributed to military service. There is insufficient evidence his misconduct could be attributed to PTSD or another mental health condition, other than his diagnosed personality disorder."

In response to the AO, you provided additional arguments in support of your application. The AO remained unchanged after a review of your response.

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 NJPs, 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. The Board also noted that the misconduct that led to your request to be discharged in lieu of trial by court-martial was substantial and, more likely than not, would have resulted in a punitive discharge and extensive punishment at a court-martial. Therefore, 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 likely punitive discharge. Additionally, the Board concurred with the AO regarding the lack of evidence supporting your contended PTSD and noted that your PD alone would not be considered as a mitigating mental health condition with respect to your misconduct. Furthermore, 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. 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,

4/12/2023

[REDACTED]

Executive Director

[REDACTED]