



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. 9218-22
Ref: Signature Date

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Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to 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 19 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 to 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 Navy and began a period of active duty on 26 August 1971, approximately 3 months after your probation for pre-service offenses was terminated. During your first year of service, for which your record indicates that you were assigned to the Naval Training Center (NTC) at ██████████, you were subject to two nonjudicial punishments (NJP). The first, on 11 January 1972, was for a violation of Article 91 of the Uniform Code of Military Justice (UCMJ) due to disrespectful language toward a superior petty officer as well as two offenses

under Article 92 for violation of command instructions by drinking as a minor and possession of alcoholic beverages. The second, on 15 August 1972, was for a violation of Article 134 for being disorderly in command. Due to your misconduct, you were administratively counseled regarding the potential for your discharge under Other Than Honorable conditions due to repeated offenses. As a result of these two NJPs, NTC requested that you be reassigned from your intended duty orders due to not being a suitable representative of the United States.

You were scheduled to report for military airlift on 16 February 1973 for transportation to the ██████████ and follow-on transportation to the ██████████ which departed from its ██████████ deployment with ██████████ to return to the ██████████ in March of 1973. On 9 April 1973, you submitted an eight page, hand-written application for discharge on the ground of being a conscientious objector in which you outlined the moral and ethical rationale which you had considered and stated "I am certain that this is the right and proper move to make ... I shall cooperate in every way to expedite processing." Your service record indicates that your sea service with the ██████████ began 7 May 1973.

In June 1973, you were interviewed by the Chaplain who documented that you had thought about your position as a conscientious objector for well over a year and that your feelings, conviction, and attitudes were not compatible with the mission or best interests of the service. However, in August 1973, you were also interviewed by a neuropsychiatrist who diagnosed you with a passive aggressive personality and assessed that your conscientious objector application was not based on sincerely held beliefs but, rather, was an attempt to obtain a discharge from the service. You subsequently received two adverse enlisted performance evaluations, in July and October 1973, which outlined extensive difficulties with your performance, your unwillingness to help maintain the ship or support the mission, your disregard of the chain of command, and your unbecoming military appearance.

On 10 October 1973, your commanding officer directed an investigation of your claim as a conscientious objector. At the hearing, you testified extensively, summarized in seven and a half single spaced pages, regarding your continued position as a conscientious objector, to include acknowledging having taken the step of submitting an application as a conscientious objector and requesting that your case be handled expeditiously. Following a hearing, the members of the investigation recommended disapproval of your claim on the grounds that there was insufficient proof of deeply held religious or ethical beliefs. While your claim was pending final action, you were subject to a third NJP, on 18 October 1973, for a violation of Article 86 due to an unauthorized absence of five hours and of Article 92 for sleeping during working hours.

Legal review of your request for discharge as a conscientious objector recommended that you be discharged, opining that your beliefs were honestly held and based upon ethical, moral, and religious training and thought development. However, on 29 October 1973, your commanding officer recommended disapproval of your request on the basis of the psychiatric evaluation, your overall daily performance and actions, and your apparent insincerity in your expressed beliefs regarding your conscientious objection. Of significant note, this recommendation for your retention expressly documented that you had made an allegation of being assaulted by your Chief Petty Officer (CPO). This recommendation was returned to your command, by the Chief of Navy Personnel (CNP), for revision on the basis that the recommendation needed to be made solely on whether you met the criteria for discharge as a conscientious objector. Subsequently, your commanding officer revised his recommendation to favorably endorse your discharge on

the basis of your claim as a conscientious objector. Subsequently, CNP directed your discharge for convenience of the government by reason of conscientious objection and permitted your commanding officer the option to assign a reentry code of either RE-3C or RE-4. At the time of your discharge, on 6 December 1973, your final trait average of 2.65 was insufficient to qualify for an “Honorable” characterization of service. Therefore, you were discharged with a General (Under Honorable Conditions) characterization of service.

Your previous application to the Board, Docket No. 2871-21, was considered on 22 October 2021, wherein you contended that your discharge was the result of false charges against you [your third NJP] rather than your claim as a conscientious objector and that your misconduct was the result of a mental health condition or post-traumatic stress disorder (PTSD) due to being assaulted by your CPO and due to trauma you experienced after nearly falling overboard while underway at sea during a hurricane. This Board denied your request on 13 October 2021 after determining the totality of the circumstances did not support relief.

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 to “Honorable,” to remove all derogatory information from your record, and to correct your record to reflect your military awards and combat deployment to ██████████. For purposes of clemency and equity consideration, the Board considered the evidence you submitted in support of your application.

Based on your assertion of a mental health condition, 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 in-service personality disorder diagnosis was based on observed behaviors and performance during his period of service, the information he chose to disclose, and the psychological evaluation performed. A personality disorder diagnosis is pre-existing to military service by definition, and indicates lifelong characterological traits unsuitable for military service. There is no evidence of error in the in-service diagnosis. Post-service, the VA has granted service connection for PTSD. There is insufficient evidence to attribute his misconduct to symptoms of PTSD, as the majority of his misconduct occurred prior to the traumatic precipitants, and he denies engaging in the misconduct after the traumatic precipitants.

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

In response to the AO, you submitted additional arguments in support of your case and regarding the shortcomings of the AO. After a review of your rebuttal evidence, the AO remained unchanged.

After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. With respect to your allegation that your CPO assaulted you, you again submit evidence of a communication in which he admits as much. Additionally, you continue to assert that you never intended to request a discharge as a conscientious objector and that your command forced your discharge as a means to cover up that your CPO had assaulted you. To this extent, the Board noted that your commanding officer not only referenced your allegation of assault in his recommendation to CNP but also that he recommended your retention rather than your requested discharge. CNP actually returned your request for a revised recommendation based upon the favorable endorsements from the Chaplain and reviewing judge advocate. Additionally, the Board observed that you provided an extensive explanation in both your initial application as well as during the hearing regarding the basis for your claim for discharge as a conscientious objector. Given the ample evidence of record, to include your own testimony regarding your application and desire for expeditious action on your discharge request, the Board found your contentions regarding your discharge as a conscientious objector wholly without merit.

The Board also considered your contentions that your experience of traumatic events, to include encountering Russian forces while at sea and having to stand ready for a potential attack, and your diagnosis of service connected PTSD by the Department of Veterans Affairs (VA) merits liberal consideration for an upgraded discharge and correction of your record. However, the Board concurred with the AO that the majority of your misconduct occurred during your first two NJPs, which were prior to the traumatic events you reported in relation to your PTSD. Further, the Board noted that you deny the misconduct of your third NJP. Therefore, the Board concurred with the AO that your PTSD would not mitigate that misconduct even under a grant of liberal consideration. Further, the Board observed that the misconduct of your first two NJPs was of sufficient severity that NTC requested a change to your duty assignment on the basis that you were not considered a suitable representative of the United States. On these basis of this evidence alone, the Board concluded that, even if it were to fully dismiss your third NJP from consideration, the misconduct of your earlier NJPs clearly warranted a discharge under honorable conditions and, therefore, the potentially mitigating factors you submitted for consideration are insufficient to outweigh the misconduct of your NJPs in January and August of 1972. Finally, the Board relied on the presumption of regularity in determining that NJP was appropriately imposed in your case. The Board relies on a presumption of regularity to support the official actions of public officers and, in the absence of substantial evidence to the contrary, will presume that they have properly discharged their official duties. After reviewing the evidence, the Board concluded you have not produced substantial evidence to overcome the presumption. As a result, the Board found significant negative aspects of your service outweighed the positive aspects and continues to merit a General (Under Honorable Conditions) characterization. While the Board carefully considered the evidence you submitted in mitigation, 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. 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.

With respect to your request regarding awards, the Board noted that you have not exhausted your administrative remedies by first submitting a request for review of your entitlement for awards to

Navy Personnel Command. Therefore, the Board determined this aspect of your request was not yet ripe for consideration.

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,

5/31/2023

