



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. 2296-23
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 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 6 November 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, 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 the advisory opinion (AO) furnished by a qualified mental health professional, dated 21 September 2023. Although you were afforded an opportunity to submit an AO rebuttal, you chose not to do so.

You enlisted in the Navy and began a period of active duty on 13 January 1997. Upon your enlistment, you were granted a waiver for your Hypertension diagnosis. Between 6 May 1997 and 17 February 1998, you had four periods of unauthorized absence (UA) totaling eight-days. On 19 March 1998, you received nonjudicial punishment (NJP) for a period of UA and violation of a general order. On the same date, you were counseled concerning your previous UCMJ violations and advised that failure to take corrective action could result in administrative separation. Between 14 October 1998 and 19 October 1998, you had three periods of UA totaling

five days and resulting on you missing ship movement on 15 October 1998. Subsequently, between 3 November 1998 and 19 May 2000, you received NJP on four occasions for three periods of UA, one instance of missing ship movement, two instances of assault, two instances of disorderly conduct, and two instances of willful disobedience and disrespect towards a noncommissioned officer. On 28 December 2000, you were discharged with a General (Under Honorable Conditions) (GEN) discharge characterization of service by reason of completion of active duty service.

Post-discharge, you applied to the Naval Discharge Review Board (NDRB) for a discharge upgrade. On 6 June 2013, the NDRB denied your request after determining your discharge was proper as issued.

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 and contention that: (a) you entered active duty service with undiagnosed trauma, depression, and anxiety, (b) you decided to self-medicate and got in trouble as a result of your incapability to deal with everything, (c) your trauma was exacerbated while in service and new conditions began to emerged. For purposes of clemency and equity consideration, the Board considered the evidence you submitted in support of your application.

As part of the Board's review, the Board considered the AO. The AO stated in pertinent part:

The Petitioner submitted VA rating indicating service-connection for PTSD, Major Depressive Disorder, and Alcohol Use Disorder. The VA Disability Benefits Questionnaire (DBQ) indicate that the veteran informed the evaluator that he was present but incapacitated and could not prevent a rape that he witnessed while in service. There is no evidence of this event contained within his service record. There is no evidence that the Petitioner was diagnosed with a mental health condition or suffered from PTSD while in military service, or that he exhibited any psychological symptoms or behavioral changes indicative of a diagnosable mental health condition. 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 AO 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."

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 the likely negative impact it had on the good order and discipline of your unit. Additionally, the Board concurred with the AO that there is insufficient

evidence that your misconduct could be attributed to a mental health condition. As explained in the AO, there is no evidence that you were diagnosed with a mental health condition or suffered from PTSD while in military service, or that you exhibited any psychological symptoms or behavioral changes indicative of a diagnosable mental health condition. Additionally, your personal statement is not sufficiently detailed to establish clinical symptoms or provide a nexus with your misconduct. As a result, the Board concluded significant negative aspects of your service outweigh the positive aspects and continues to warrant a GEN characterization. While the Board carefully considered the evidence you submitted in mitigation, even in light of the Kurta, Hagel, and Wilkie Memos 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.

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 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,

11/22/2023

