



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. 2612-23
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 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 23 May 2023. The names and votes of the members of the panel 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 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 joined active duty Navy service in July 1998. On 26 March 1999, you received non-judicial punishment (NJP) for unauthorized absence (UA), from 11 January 1999 to 22 March 1999, and five specifications of missing ship movement.

In May 1999, you were in a motor vehicle accident. You were evaluated and placed on light duty on 3 June 1999. You received a second NJP, on 1 July 1999, for failure to go to your appointed place of duty. Subsequently, you were processed for an administrative separation due to a pattern of misconduct. After waiving your procedural rights, the discharge authority directed your discharge with an Other Than Honorable (OTH) characterization of service due to a pattern of misconduct. You were so discharged on 30 July 1999.

You previously applied to this Board for a discharge upgrade and you were denied relief on 19 December 2022. In addition, your application to the Naval Discharge Review Board was similarly denied on 31 October 2001.

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 effect a “change in military records, performance evaluations, disability and service code which reflects RE-4C” and contentions that you incurred mental health concerns during military service that impacted your performance. For purposes of clemency and equity consideration, the Board considered the new evidence you provided in support of your application.

Based on your contention that you suffered from mental health conditions, the Board considered the advisory opinion issued as part of your previous application to this Board. The AO stated in pertinent part:

There is no evidence that the Petitioner 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. His evidence from both [REDACTED], and sports medicine and primary care do not contain evidence of mental health conditions. The psychiatric evaluation from [REDACTED] does provide a diagnosis of Major Depressive Disorder, Recurrent Moderate, but does not contain sufficient evidence linking his post-service diagnosis to his misconduct in service. The psychological evaluation from [mental health provider] indicates a diagnosis of PTSD, however, his diagnosis lacks the minimum criteria in order to meet qualifications for that diagnosis. Both evaluations are temporally remote to his time in service. The Petitioner submitted a six-page statement during his Captains Mast whereby he stated that his unauthorized absences were due to caring for his grandmother. He never mentioned any psychological symptoms or mental health conditions during his out-processing. His CO submitted a letter in January 1999 to the Petitioner’s listed emergency contacts with a hand-written portion stating, “I realize that your son has experiences bad weather and car troubles, but it’s been 10 days since he was due back to work and I’m concerned that he doesn’t appear to be making all possible effort [sic] to return.” Unfortunately, his personal statement is not sufficiently detailed to establish clinical symptoms or provide a nexus with his misconduct.

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.”

The Board also considered your personal statement, dated 18 March 2023, submitted in response to the AO. In your statement, you provided additional clarifying information regarding the circumstances of your case.

After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. In keeping with the letter and spirit of the Kurta Memo, the Board gave liberal and special consideration to your record of service, and your contentions about any traumatic or stressful events you experienced, and their possible adverse impact on your service, to include whether they qualified you for the military disability benefits you seek. 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. Further, the Board concurred with the AO that there is insufficient evidence that your misconduct could be attributed to a mental health condition. The Board noted in 1999 that you claimed your unauthorized absences were due to caring for your grandmother and you never mentioned any psychological symptoms or mental health conditions. 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 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 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,

6/6/2023

