



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

█
Docket No. 2696-23
Ref: Signature Date



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 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 20 September 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). In addition, the Board considered an advisory opinion (AO) from a qualified mental health professional. Although you were provided an opportunity to respond to the AO, you chose not to do so.

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 U.S. Navy and entered active duty on 2 June 1992. You started a period of unauthorized absence (UA), on 16 December 1992, that lasted three days. You then started

another period of UA, on 5 February 1993, that lasted until 19 March 1993. On 6 April 1993, you were found guilty at summary court-martial (SCM) for your two periods of UA and wrongfully alter a public record. As a result, the Commanding Officer (CO) made his recommendation to the Separation Authority (SA) that you be discharged for misconduct and be assigned an Other Than Honorable (OTH) characterization. The SA accepted the recommendation and directed you be discharged. You were so discharged on 25 May 1993.

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 contentions that your grandmother was dying, you were ordered back to the ship, the lawyer in the Navy suggested separation and offered no assistance, and nothing was ever explained to you. For purposes of clemency and equity consideration, the Board noted you did not provide supporting documentation describing post-service accomplishments and no advocacy letters.

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 9 August 2023. The Ph.D. stated in pertinent part:

During military service, the Petitioner was diagnosed with a mental health condition (Adjustment Disorder). Although there is no evidence of a formal diagnosis of PTSD, the Petitioner has claimed that his in-service mental health symptoms resulted in PTSD. While there is evidence of the Petitioner's personal stressors of family illness and death, the Petitioner did not provide evidence of significant psychopathology when he was evaluated in service. Unfortunately, available records are not sufficiently detailed to provide a nexus with his misconduct, particularly given his repeated UA. It is also difficult to consider record alterations as a mental health symptom. Additional records (e.g., post-service mental health records describing the Petitioner's diagnosis, symptoms, and their specific link to his misconduct) may contribute to an alternate opinion.

The Ph.D. concluded, "it is my clinical opinion there is in-service evidence of a mental health condition that may be attributed to military service. There is insufficient evidence of a diagnosis of PTSD. There is insufficient evidence to attribute his misconduct 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 SCM, 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 and determined there is no evidence of a formal diagnosis of PTSD and there is insufficient evidence his misconduct could be attributed to mental health condition. As explained in the AO, while there is evidence you experienced personal stressors of family illness and death, there was insufficient evidence of significant psychopathology when you were evaluated in service. Ultimately, the Board concluded that your discharge was proper and equitable under standards of law and

discipline and that the discharge accurately reflects your conduct during your period of service, which was terminated by your separation with an OTH. Finally, 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. 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. 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,

9/27/2023

