



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. 3771-23
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 2 October 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 this 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) furnished by a qualified mental health professional as well as your response to the AO.

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 Navy and began a period of active duty on 29 January 1981. On your enlistment application, you acknowledged pre-service misconduct related to trespassing, theft, driving without a license, and marijuana use.

On 13 January 1982, you were absent from your appointed place of duty. On 23 July 1982, you began another period of unauthorized absence (UA) from your command and remained absent until 27 July 1982, for a total period of four days. On 20 August 1982, you again went UA and remained absent until 23 August 1982, for a total period of three days.

On 9 November 1982, you received non-judicial punishment (NJP) for violation of Uniform Code of Military Justice (UCMJ) Article 92, for three specifications of disobedience by missing restricted muster, not observing reveille, and wearing civilian clothes in a restricted status. You did not appeal this NJP.

On 8 December 1982, you went UA and remained absent until 10 December 1982, for a total period of two days. Finally, on 12 January 1983, you went UA and remained absent until 20 March 1984, for a total period of 433 days. On 22 March 1984, upon your return to military control, you were evaluated by a military psychologist, who diagnosed you with Mixed Personality Disorder with Antisocial, Impulsive, and Immature Features.

On 10 April 1984, your command referred charges to Special Court Martial (SPCM) related to your violations of UCMJ Article 86. On 12 April 1984, in accordance with MILPERSMAN 3630650, you requested a separation in lieu of trial by court martial (SILT). You acknowledged that if your request was accepted, you would be discharged under Other Than Honorable (OTH) conditions. Prior to your discharge, you denied mental health symptoms during your separation physical, which noted that you were “being separated due to character disorder NCD [not considered disabling].” Your commanding officer accepted your SILT request and, on 27 April 1984, you were discharged from the Navy by reason of “Separation in Lieu of Trial by Court Martial” with an OTH characterization of service and an “RE-4” reenlistment code.

The Board carefully considered all potentially mitigating and/or extenuating 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: (a) your desire to upgrade your characterization of service, (b) your contention that you were struggling with undiagnosed mental health issues, and (c) the impact of your mental health concerns on your conduct. For purposes of clemency and equity consideration, the Board noted you provided documentation related to your post-service accomplishments and character letters.

In your petition, you contend that you were suffering from undiagnosed PTSD and other mental health concerns due to numerous traumatic events, to include assisting in the fire control of the ship while at sea, cleaning an elevator shaft, and the death by suicide of fellow shipmates. You assert that you felt forced to accept the OTH discharge or risk committing suicide if forced to go back to the ship. In support of your request, you provided a March 2023 letter from your civilian provider who stated that you have received treatment since March 2020 to address “symptoms of PTSD that were related to two specific incidents during his short military career.”

As part of the Board’s review process, a qualified mental health professional reviewed your contentions and the available records and issued an AO dated 13 September 2023. The AO noted 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 evaluation performed by the mental health clinician. Post-service, he has received a diagnosis of PTSD that is temporally remote to his military service. Although it is possible that some symptoms identified as characterological traits may have been re-conceptualized as symptoms of PTSD with the passage of time, there is no evidence of error in his in-service diagnosis. 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., complete post-service mental health records describing the Petitioner's diagnosis, symptoms, and their specific link to his misconduct) may aid in rendering an alternate opinion.

The AO concluded, "it is my clinical opinion there is post-service evidence from a civilian mental health clinician of a diagnosis of PTSD that may be attributed to military service. There is insufficient evidence to attribute his misconduct to symptoms of PTSD or another mental health condition, other than his personality disorder."

After thorough review, the Board concluded your potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your NJP and SILT request, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the impact that your repeated UAs had on the mission. The Board highlighted that you requested a SILT, thereby avoiding a possible court martial conviction and punitive discharge. The Board felt that the separation authority already granted you a large measure of clemency by accepting your separation in lieu of trial by court martial.

In making this determination, the Board concurred with the advisory opinion that there was no convincing evidence that you suffered from any type of mental health condition while on active duty, or that any such mental health condition was related to or mitigated the misconduct that formed the basis of your discharge. Your in-service misconduct appears to be consistent with your diagnosed personality disorder, rather than evidence of PTSD or another mental health condition incurred in or exacerbated by military service. Your post-service diagnosis of PTSD is temporally remote to your service. Further, your SILT request does not mention any mental health concerns, which would have triggered a mental health referral and assessment prior to your discharge. As a result, the Board concluded that your misconduct was not due to mental health-related symptoms. The Board determined the record clearly reflected that your active duty misconduct was intentional and willful and demonstrated you were unfit for further service. The Board also determined that the evidence of record did not demonstrate that you were not mentally responsible for your conduct or that you should otherwise not be held accountable for your actions. The Board concluded that your conduct constituted a significant departure from that expected of a Sailor and continues to warrant an OTH 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 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,

10/5/2023

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Executive Director

Signed by: █