



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. 4072-23
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 5 January 2024. 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 17 November 2023. Although you were afforded an opportunity to submit an AO rebuttal, you chose not to do so.

Regarding your request for a personal appearance, the Board determined that a personal appearance with or without counsel will not materially add to their understanding of the issue(s) involved. Therefore, the Board determined that a personal appearance was not necessary and considered your case based on the evidence of record.

On 30 June 1989, you enlisted in the Naval Reserves under the Delayed Entry Program (DEP). On 29 June 1990, you were discharged from the DEP with an Entry Level Separation

characterization by reason of failure to graduate. On 18 January 1991, you enlisted in the Naval Reserves with a waiver for DEP failure. On the same date, you admitted preservice use of marijuana on one occasion. On 19 February 1991, you began a period of active duty service. On 11 October 1991, you received nonjudicial punishment (NJP) for fraudulent use of a military I.D. card. On 13 October 1991, you were counseled concerning your previous NJP violation and advised that failure to take corrective action could result in administrative separation. On 18 February 1993, you were honorably discharged from the Naval Reserves by reason of expiration of required active duty service. On 7 October 1993, you were honorably discharged from the Naval Reserves by reason of selected change in service obligation. On 8 October 1993, you enlisted in the U.S. Army Reserves. On 1 June 1999, you were discharged from the U.S. Army Reserves.

You reenlisted in the Navy with waivers for reentry code and break in service and began a period of active duty service on 30 April 2001. On 24 September 2002, you received NJP for drunken and reckless driving. On 9 December 2002, you received NJP for a period of unauthorized absence (UA) from your appointed place of duty and communicating at threat. On 15 December 2003, you received NJP for failure to obey a lawful order by having two bottles of liquor onboard the █. On the same date, you were counseled concerning your previous NJP violations and advised that failure to take corrective action could result in administrative separation. On 8 November 2004, you began a period of UA which lasted 43 days and resulted in your apprehension by civil authorities. On 22 December 2004, you received a NJP for desertion and two instances of missing ship movement. On 24 December 2004, you began a second period of UA, which lasted 90 days and resulted in your apprehension by civil authorities.

On 1 April 2005, you were notified of the initiation of administrative separation proceedings by reason of misconduct due to commission of a serious offense and pattern of misconduct. Subsequently, you decided to waive your procedural rights. On the same date, your commanding officer recommended an Other Than Honorable (OTH) discharge characterization by reason of misconduct due to commission of a serious offense, and misconduct due to pattern of misconduct. On 22 April 2005, the separation authority approved and ordered an OTH discharge characterization by reason of misconduct due to commission of a serious offense. On 30 April 2005, you were discharged in absentia.

Post-discharge, you applied to the Naval Discharge Review Board (NDRB) for relief. On 7 October 2016, the NDRB denied your request after concluding 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 contentions that: (a) you developed PTSD during your first enlistment as a result of fuel exposure aboard the █, (b) you were a good sailor as evidence by your evaluations, (c) you were charged with UA and missing ship movement as a result of you been arrested, and (d) your symptoms of PTSD were left untreated after witnessing another sailor die. For purposes of clemency and equity consideration, the Board noted you did submitted copies of your PTSD questionnaire, PTSD Individual Statement, VA Statement in Support of Claim, Traffic Citation,

Court Final Disposition, Report of Disposition of Offense, and an article concerning Neuropsychiatric Symptoms.

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

There is no in-service evidence of diagnosis or treatment for PTSD, TBI, or other mental health concerns. There is some behavioral evidence of a possible alcohol use disorder. However, there is insufficient evidence to attribute his behavior to PTSD, TBI, or another mental health condition incurred during his first period of active duty service from 1991 to 1993, given the passage of time and the absence of mental health symptoms reported prior to his second period of Navy service. Additional records (e.g., post-service mental health records describing the Petitioner's diagnoses, symptoms, and their specific link to his misconduct) may aid in rendering an alternate opinion.

The AO concluded, "there is insufficient evidence of a diagnosis of PTSD, TBI, or another mental health condition that may be attributed to military service. There is insufficient evidence to attribute his misconduct PTSD, TBI, or another 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 found that your conduct showed a complete disregard for military authority and regulations. The Board noted that you were given multiple opportunities to correct your deficiencies but continued to commit misconduct. 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, while there is some behavioral evidence of a possible alcohol use disorder, there is insufficient evidence to attribute your behavior to PTSD, TBI, or another mental health condition incurred during his first period of active duty service, from 1991 to 1993, given the passage of time and the absence of mental health symptoms reported prior to your second period of Navy service. 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 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,

1/22/2024

