



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. 4160-23
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 22 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, 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). As part of the Board's review, a qualified mental health professional reviewed your request and provided the Board with an Advisory Opinion (AO) on 27 November 2023. Although you were afforded an opportunity to submit a rebuttal, you chose not to do so.

On 27 June 1993, you accepted your oath of office as a commissioned officer in the Navy Reserve and began a period of active duty as a Chaplain. On 31 January 2003, you submitted a qualified resignation request for a General discharge in response to a show cause determination for engaging in an adulterous affair with a parishioner. On 4 March 2003, Chief of Naval Personnel recommended to the Secretary of the Navy that your request be approved and you be issued a separation code of BKQ (misconduct – commission of a serious military or civilian offense). On 16 May 2003, the Assistant Secretary of the Navy (Manpower and Reserve Affairs), approved your request and, on 18 July 2003, you were so discharged.

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, remove the “misconduct” verbiage on your Certificate of Release or Discharge From Active Duty (DD Form 214), and have you GI Bill benefits reinstated. You contend that you incurred mental health concerns during military service, you were falsely accused of infractions you did not commit, you were advised by your attorney to submit a qualified resignation, and you were unaware of the separation code you were issued. For purposes of clemency and equity, the Board noted you provided a personal statement, official military personnel file (OMPF) documents, Department of Veterans Affairs (DVA) documents, medical documents, and character letters.

Based on your assertions that you incurred PTSD and other mental health concerns during military service, which might have mitigated your discharge characterization of service, a qualified mental health professional reviewed your request for correction to your record and provided the Board with an AO. The AO stated in pertinent part:

The Petitioner submitted VA Disability Questionnaire (DBQ) conducted in 2020 along with more detailed explanations by the examining psychologist who diagnosed him with PTSD, Panic Disorder and Major Depressive Disorder and ultimately found to be 70% service-connected for those diagnoses. The Petitioner submitted 4 character references as well as in-service and post-service accomplishments. 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. He submitted post-service and temporally remote psychiatric diagnoses from the VA, however there is no evidence contained within his service record that he manifested any symptoms at that time of any psychiatric illness. 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 conclude, “it is my considered clinical opinion there is sufficient evidence of post-service mental health conditions of PTSD, Panic Disorder and Major Depressive Disorder. There is insufficient evidence that these post-service diagnoses mitigated his in-service misconduct.”

After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as noted above, 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. Additionally, the Board agreed with the AO that, while there is sufficient evidence of post-service mental health conditions of PTSD, Panic Disorder and Major Depressive Disorder, there is insufficient evidence that your post-service diagnoses mitigated your in-service misconduct. As explained in the AO, there is no evidence contained

within your service record that you manifested any symptoms at that time of any psychiatric illness. Lastly, the Board was not persuaded by your arguments of false accusations and unjust treatment. The Board determined you were represented by legal counsel of your choice and you made the personal decision to submit a qualified resignation in lieu of facing a Board of Inquiry. As such, the Board concluded you were well informed of the consequences of your decision, including the fact your discharge would be based on your misconduct. As a result, the Board concluded your narrative reason for separation remains correct and appropriate. 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.

In regard to your request that your request to have your GI Bill benefits restored, you must contact the Department of Veterans Affairs (VA). The Board has no authority to grant benefits under the cognizance of another government agency. You may contact the VA by calling, toll-free, 1-888-442-4551 or online at <http://www.va.gov>.

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,

1/29/2024

