



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. 4238-23
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.

Because your application was submitted with new evidence not previously considered, the Board found it in the interest of justice to review your application. A three-member panel of the Board, sitting in executive session, considered your application on 20 December 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 25 August 2017 guidance from the Office of the Under Secretary of Defense for Personnel and Readiness (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 and your response to the AO.

You previously applied to this Board for an upgrade to your characterization of service and were denied on 20 April 2022. The facts of your case remains substantially the same.

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 change your discharge character of service and your contentions that: (1) you had a mental health condition that affected your ability to complete your naval reserve obligations, (2) you incurred mental health concerns after

learning of the violent sexual assault of your fiancé in and subsequent denial of assistance by your command, (3) you requested psychological help and was denied any type of mental health exams or treatment, (4) your unanswered psychological request for help carried over to your personal life after your discharge causing absences from your reserve obligations, (5) completing your reserve obligations was not possible due to a “grave error” made by your commanding officer, (6) you should not have been discharged without an evaluation of some sort; after your release from active duty, you were unable to get private treatment because of your financial hardships, (7) you were unable to complete your obligations because of your undiagnosed depression you suffered from and the mishandling of your request for psychological help, and (8) if Navy regulations were followed, your Other Than Honorable (OTH) discharge would never have happened. For purposes of clemency and equity consideration, the Board noted you provided personal statements, documentation from the Department of Veterans Affairs, and a medical certificate from a psychiatrist but no supporting documentation describing post-service accomplishments or advocacy letters.

As part of the Board’s review, a qualified mental health professional reviewed your request and provided the Board with an AO on 3 July 2023. The AO noted in pertinent part:

There is no evidence that he was diagnosed with a mental health condition while in military service. While there is evidence that he was referred for evaluation for possible mental health concerns, there is no evidence of follow-up or participation in an evaluation. Post-service, the Petitioner has received diagnoses of mental health conditions that are temporally remote to military service and appear unrelated. The VA has denied service connection for mental health concerns. 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 AO concluded, “it is my clinical opinion there is insufficient evidence of a diagnosis of PTSD or another mental health condition that may be attributed to military service. There is insufficient evidence to attribute his unsatisfactory drill participation to PTSD or another mental health condition.”

In response to the AO, you provided a personal statement that supplied additional clarification of the circumstances of your case.

After thorough review, the Board concluded your potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your unsatisfactory participation in the USNR, as evidenced by your multiple unexcused absences from drill, outweighed these mitigating factors. In making this finding, the Board the Board considered the seriousness of your misconduct and found that your conduct showed a complete disregard for military authority and regulations. The Board also considered the likely negative impact your conduct had on the good order and discipline of your command. Further, the Board concurred with the AO that there is insufficient evidence of a diagnosis of PTSD or another mental health condition that may be attributed to military service, and there is insufficient evidence to attribute your unsatisfactory drill participation to PTSD or another mental health condition. As the AO explained, there is no

evidence that you were diagnosed with a mental health condition while in military service. While there is evidence that you were referred for an evaluation for possible mental health concerns, there is no evidence of follow-up or participation in an evaluation. Therefore, the Board 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. Finally, the Board noted that you did not provide any evidence, other than your statement, to substantiate your contentions. As a result, the Board determined 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 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,

1/16/2024

