



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. 4274-23
Ref: Signature Date

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Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to 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 4 January 2024. The names and votes of the members of the panel 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, 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 the 20 November 2023 Advisory Opinion (AO) from a Licensed Clinical Psychologist. 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.

A review of your record shows that you enlisted in the Navy and entered active duty on 19 June 1989. On 10 November 1993, you received nonjudicial punishment (NJP) for violating Article 92 (failure to obey a lawful order) of the Uniform Code of Military Justice (UCMJ) for failing to

report to the command financial counselor and completing a financial update. You received your second NJP, on 10 December 1993, for violating Article 86 of the UCMJ, (unauthorized absence (UA)), and Article 92. On 25 April 1994, you were hospitalized in a civilian hospital for a suicidal ideation. You were transferred to [REDACTED], on 3 May 1994, where you underwent a psychological evaluation which noted you were stressed due to a pending NJP for issues related to indebtedness on a government credit card in the amount of \$7300. You were diagnosed with Major Depression, Single Episode, and Personality Disorder, Not Otherwise Specified with Anti-Social, Borderline and Passive Aggressive Features. On 16 May 1994, you received your third NJP for violating Article 92, Article 107, false official statement, and Article 134, dishonorable failure to pay debts, of the UCMJ. Consequently, you were notified of administrative separation processing for misconduct due to pattern of misconduct and commission of a serious offense. On 13 July 1994, an administrative separation board found that you committed misconduct due to a pattern of misconduct and that you had a Personality Disorder. The ASB recommend separation due to misconduct and an Honorable characterization of service. You subsequently were discharged from the Navy, on 21 November 1994, with an Honorable characterization of service due to pattern of misconduct.

For this petition, you contend that you incurred a traumatic brain injury (TBI) in service and that your TBI led to mental health deterioration, which in turn contributed to your misconduct. You request a medical retirement due to TBI, a change in your narrative reason for separation to medical retirement, and restoration of your paygrade to E-4. You included documents from the Department of Veterans Affairs (VA) to show that you receive a 30% rating from the VA for TBI.

The Board carefully considered all potentially mitigating factors to determine whether the interests of justice warrant relief in your case in accordance with the Hagel, Kurta, and Wilkie Memos. These included, but were not limited to, your desire for a disability retirement and reinstatement to paygrade E-4. You contend that you deserve a medical discharge because you suffered from conditions while in-service that resulted in your misconduct.

Based on your assertions that you incurred a mental health concern (MHC) during your military service, which might have mitigated your discharge, 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:

A personality disorder diagnosis is pre-existing to military service by definition, and indicates lifelong characterological traits unsuitable for military service, since they are not typically amenable to treatment within the operational requirements of Naval Service. His in-service misconduct appears to be consistent with his diagnosed personality disorder, rather than evidence of TBI or another mental health condition incurred in or exacerbated by military service.

The AO concluded, “[t]here is insufficient evidence of a mental health condition that may be attributed to military service. There is insufficient evidence that his misconduct could be attributed to a mental health condition.”

After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board noted there is no diagnosis or evidence of any TBI in your service record. The Board further noted there was no record of depression or mental health concerns in your record until you were pending your third NJP. Moreover, the Board concurred with the AO that your Personality Disorder diagnosis is a pre-existing condition and that your misconduct was not related to a TBI. Therefore, the Board determined you were mentally responsible for the misconduct that formed the basis of your administrative separation. As a result, the Board concluded you were properly reduced in paygrade at NJP and appropriately discharged for your pattern of misconduct. 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,

1/26/2024

