



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. 4783-23

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 November 24, 2023. Although you were afforded an opportunity to submit a rebuttal, you chose not to do so.

You enlisted in the Navy and began a period of active service on 11 March 1966. While at █, you received your first nonjudicial punishment (NJP) for sleeping at your post. From 28 April to 1 November 1967, while stationed onboard █ you participated in support missions in the Republic of █. During this time, you received three additional NJPs and were convicted at a summary court-martial (SCM) of infractions ranging from reading a book while posted as a gun watch to disobeying a lawful order. You were subsequently transferred to █ base, █, where you received two additional NJPs and a second SCM conviction for UA, abandoning your desk watch, and failing to go to your appointed place of duty.

Consequently, you were notified of your pending administration processing for unfitness as evidenced by your frequent involvement of a discreditable nature with military authorities, at which time you elected your right to consult with counsel and have your case heard before an administrative discharge board (ADB). On 12 June 1969, an ADB was held, unanimously found you committed misconduct, and recommended you be discharged with an Other Than Honorable (OTH) characterization of service by reason unfitness for your frequent involvement of a discreditable nature with military authorities. On 26 September 1969, the separation authority directed you be discharged with an OTH. On 13 October 1969, 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 and your contentions that you incurred PTSD from Vietnam exposure and depression due to family stressors including the illness of your son, and your NJPs and SCM convictions were erroneous or unfair due to false charges or mental health symptoms. For purposes of clemency and equity consideration, the Board noted you provided a personal statement, national personnel records center correspondence, character letters, medical documents, ADHD (Attention Deficit Disorder/Attention Deficit Hyperactivity Disorder) information, Department of Veterans Affairs documents, two copies of your DD Form 214 (Certificate of Release or Discharge from Active Duty), and toxic metals information.

Based on your assertions that you incurred PTSD during military service, which might have mitigated the circumstances of your separation, 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:

There is no evidence that he was diagnosed with a mental health condition in military service, or that he exhibited any psychological symptoms or behavioral changes indicative of a diagnosable mental health condition. Throughout his disciplinary processing, there were no concerns raised of a mental health condition that would have warranted a referral for evaluation. He has provided civilian medical evidence of mental health diagnoses that are temporally remote to military service and appear unrelated. The VA has granted service connection for PTSD that is temporally remote to his service. It is possible that his May 1968 UA could be attributed to unrecognized symptoms of PTSD or another mental health condition. While the Petitioner claims symptoms of ADHD account for some of his misconduct, his personal statement is not sufficiently detailed to establish clinical symptoms of ADHD account for some of his misconduct, given the absence of report of mental health symptoms during pre-service screening and the absence of post-service medical evidence regarding any interference of purported symptoms of ADHD. Additionally, as the Petitioner denies engaging in much of the misconduct, it can not be attributed to a mental health condition. Additional records (e.g., 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 conclude, “it is my clinical opinion there is post-service evidence from the VA of a diagnosis of PTSD that may be attributed to military service. There is insufficient evidence to attribute the majority of his misconduct to PTSD 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 and SCM convictions, 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, there is insufficient evidence to attribute the majority of your misconduct to PTSD or another mental health condition. Further, the Board was not persuaded by your arguments of unfair treatment and unjust punishment. The Board noted you provided no evidence, other than your personal statement, to substantiate your contentions. As a result, the Board concluded your conduct constituted a significant departure of that expected of a service member and continues to warrant an OTH. While the Board carefully considered the evidence you submitted in mitigation and commends you for your post-discharge accomplishments, 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 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,

2/2/2024

