



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. 5735-23
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 4 March 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 11 January 2024. 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.

You enlisted in the Navy and began a period of active duty on 28 October 1980. On 28 January 1982, you were counseled concerning misconduct and advised that failure to take corrective action could result in administrative separation. On 24 February 1982, you received nonjudicial punishment (NJP) for three instances of failure to report to prescribed place of duty and disobeying a lawful order. On 5 April 1982, you began a period of unauthorized absence (UA) which lasted 13 days and resulted in NJP on 26 April 1982. On 22 April 1982, you were counseled regarding your misconduct and advised that failure to take corrective action could result in administrative separation.

On 18 June 1982, you were diagnosed with Tear, Peripheral , Left Medial Meniscus. On 30 June 1982, a Medical Board placed you on six months limited duty. On 19 January 1983, you were instructed to returned to limited duty ashore for a period of six months with limitations.

On 15 February 1983, you began a period of UA which lasted 1 hour, and 10 minutes. On 13 June 1983, you were counseled concerning the commission of a serious offense, specifically, larceny of government services. You were advised that failure to take corrective action could result in administrative separation. However, between 16 June 1983 to 17 February 1984, you received NJP in four occasions for intent to defraud, two instances of UA, and stealing a can of Copenhagen Snuff property of the NEX.

Consequently, on 23 February 1984, you were notified of the initiation of administrative separation proceedings by reason of misconduct due to pattern of misconduct. You decided to request a case hearing by an Administrative Discharge Board (ADB). On 3 April 1984, the ADB voted (3) to (0) that you committed misconduct due to pattern of misconduct. On 25 April 1984, your commanding officer recommended an Other Than Honorable (OTH) discharge characterization of service by reason of misconduct due to pattern of misconduct. On 8 May 1984, the separation authority approved and ordered an OTH discharge characterization by reason of misconduct due to pattern of misconduct. On 8 June 1984, 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 for a discharge upgrade and contentions that: (a) you understood the seriousness of your job and how lives were counting on you to do your job to the fullest in order to keep a ship and its crew safe, (b) you wanted to stay to make sure you were in great shape and learned your job inside out, (c) your trouble began as you went to the gym and injured your knee while working out, (d) you were put in a nondeployable status and your unit abandoned you, and (e) you endured racial discrimination, harassment, threats, verbal abuse, and false accusations concerning your injury. For purposes of clemency and equity consideration, the Board noted you provided a personal statement but no supporting documentation describing post-service accomplishments or advocacy letters.

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

There is no evidence that the Petitioner was diagnosed with a mental health condition while in military service, or that he exhibited any psychological symptoms or behavioral changes indicative of a diagnosable mental health

condition. There is no evidence that he was harassed, nor did he report having been the victim of harassment in any administrative proceedings. He did not submit any medical evidence in support of his claim. 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 concluded, "it is my considered clinical opinion there 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 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 the likely negative impact it had on the good order and discipline of your unit. The Board noted that you were given multiple opportunities to correct your conduct deficiencies but continued to commit misconduct. Lastly, the Board concurred with the AO that there is insufficient evidence that your misconduct could be attributed to PTSD or a mental health condition. As explained in the AO, there is no evidence that you were diagnosed with a mental health condition while in military service, or that you exhibited any psychological symptoms or behavioral changes indicative of a diagnosable mental health condition. Further, there is no evidence that you were harassed nor did you report having been the victim of harassment in any administrative proceedings. Finally, you did not submit any medical evidence in support of your claim. 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. 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. 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,

3/19/2024

