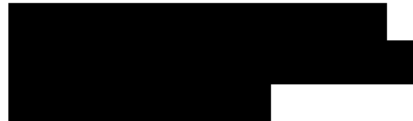




DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
701 S. COURTHOUSE ROAD, SUITE 1001
ARLINGTON, VA 22204-2490

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Docket No. 6002-23
Ref: Signature Date



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 Board waived the statute of limitation 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 23 February 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 to the Kurta Memo, the 3 September 2014 guidance from the Secretary of Defense regarding discharge upgrade requests by Veterans claiming post-traumatic stress disorder (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) of a qualified mental health provider, which was previously provided to you. 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 duty on 18 February 1999. During your first year of service, you were subject to nonjudicial punishment for violations of the Uniform Code of Military Justice to included three specifications under Article 86 for unauthorized absences, one offense under Article 92 due to underage drinking, one offense under Article 107 for making a false official statement, and an offense under Article 112a for wrongful possession of marijuana. Your punishment included 45 days of restriction and extra duty in addition to

reduction in grade and forfeitures of pay. However, you again absented yourself without authority on 16 December 1999 while in a restricted status. Upon your voluntary surrender to military authority on 25 January 2000, you were placed into pre-trial restriction. At that time, you elected to request separation in lieu of trial under other than honorable conditions for the good of the service and to escape court-martial, which was approved as requested. While awaiting administrative action on your separation request, you again absented yourself without authority on 6 February 2000 and, as a result, were discharged in absentia on 10 February 2000 with an other than honorable.

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 to “Honorable” and your contentions that you were struggling during your military service with unrecognized symptoms of your post-discharge diagnosis of Major Depressive Disorder with severe psychotic features and bipolar disorder. You believe your current mental health conditions were undiagnosed during your military service but affected your ability to serve successfully by causing inappropriate behavior beyond your control, to include your multiple unauthorized absences and your inability to adapt to a military environment. For purposes of clemency and equity consideration, the Board noted you submitted post-discharge records of your mental health diagnoses and treatment, a supporting statement from your mother, and records of your employment history and transcripts.

Because you contend that a mental health condition affected the circumstances of your misconduct and discharge, the Board also considered the AO provided by a licensed clinical psychologist. In relevant part, it advised that:

Petitioner submitted post-service records noting multiple hospitalizations, suicide attempts, and diagnoses of Bipolar Disorder and Major Depressive Disorder with psychotic features. There are no active duty medical records available for review. Post-service medical records submitted are temporally remote to service. There is no evidence that that Petitioner was diagnosed with a mental health condition in service or that he exhibited any psychological symptoms or behavioral changes indicative of a diagnosable mental health condition.

The AO concluded, “it is my considered clinical opinion there is insufficient evidence of a diagnosis 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 nonjudicial punishment and request to be discharged in lieu of trial by court-martial, 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 concurred with the AO that there is insufficient evidence that your misconduct could be attributed to a mental health condition. As explained in the AO, post-service medical records submitted are temporally remote to your service and there is no

evidence that that you were diagnosed with a mental health condition in service or that you exhibited any psychological symptoms or behavioral changes indicative of a diagnosable mental health condition. Finally, the Board noted that the misconduct that led to your request to be discharged in lieu of trial by court-martial was substantial and, more likely than not, would have resulted in a punitive discharge and extensive punishment at a court-martial. Therefore, the Board determined that you already received a large measure of clemency when the convening authority agreed to administratively separate you in lieu of trial by court-martial; thereby sparing you the stigma of a court-martial conviction and likely punitive discharge.

As a result, the Board concluded your conduct constituted a significant departure from that expected of a service member and continues to warrant an other than honorable characterization. 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,

3/5/2024

