



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

█
Docket No. 6918-23
Ref: Signature Date

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Dear █

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 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 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 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. Although you were provided an opportunity to respond to the AO, you chose not to do so.

You enlisted in the Navy and commenced active duty on 22 July 1988. On 16 June 1989, you commenced a period of unauthorized absence (UA), during which you missed ship's movement, that ended in your surrender on 17 July 1989. On 20 July 1989, you commenced a period of UA that ended in your surrender on 31 July 1989. On 10 August 1989, you received non-judicial punishment (NJP) for three specifications of UA.

On 19 June 1991, you received NJP for assault consummated by a battery for choking a Second-Class Petty Officer. On 29 August 1991, you received NJP for seven hours of UA. Additionally, you were issued an administrative remarks (Page 13) counseling concerning

deficiencies in your performance and/or conduct. You were advised that any further deficiencies in your performance and/or conduct may result in disciplinary action and in processing for administrative discharge.

On 31 April 1992, you were treated at █ Naval Hospital for pneumonia and discharged five days later.

On 23 April 1992, you received NJP for assault consummated by a battery for striking a Seaman with your fist. Consequently, on 24 April 1992, you were notified of pending administrative separation processing with an Under Other Than Honorable conditions (OTH) discharge by reason of misconduct due to pattern of misconduct. On 12 May 1992, you waived your rights to consult counsel, submit a statement, or have your case heard by an administrative discharge board (ADB). The Separation Authority subsequently directed your discharge with an OTH characterization of service, and you were so discharged on 12 June 1992.

Post-discharge, you applied to the Naval Discharge Review Board (NDRB) for a discharge upgrade. The NDRB denied your request for an upgrade, on 2 August 1994, based on their determination that your discharge was proper as issued.

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 characterization of service and your contentions that your misconduct was due to Post Traumatic Stress Disorder (PTSD) from handling civilian casualties, during Operation Sharp Edge, while on deployment from June to August 1990, you were not sleeping or eating well and developed a severe case of pneumonia, you were hospitalized for over a week and in critical condition, your Commanding Officer poorly managed the ship and was relieved of duty, these conditions contributed to your PTSD, and you were not offered any treatment. For purposes of clemency and equity consideration, the Board considered your statement, advocacy letters, and documentation of post-service accomplishments that you provided.

As part of the Board's review process, a qualified mental health professional reviewed your contentions and the available records and issued an AO dated 17 January 2024. The AO stated in pertinent part:

The Petitioner contended the trauma of his responsibility to "offload and handle casualties of the civil war in █" during Operation Sharp Edge from June to August 1990, contributed to his misconduct. He provided evidence of an August 2023 encounter with a PhD clinician, who listed diagnoses of F43.10 (PTSD) and F10.10 (Alcohol Use Disorder, Mild). PTSD symptoms were attributed to his deployment to █, as "he would carry off dead bodies of children and stow the bodies in the hangar of the flight deck...smells of planes/copters are a trigger for him."

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.

Temporally remote to his military service, a PhD clinician has apparently diagnosed him with PTSD attributed to military service. Unfortunately, available records are not sufficiently detailed to establish clinical symptoms in service or provide a nexus with his misconduct, particularly given the passage of time, limited records, and misconduct that occurred prior to the purported █ deployment.

The AO concluded, “it is my clinical opinion there is post-service evidence from a civilian PhD clinician of a diagnosis of PTSD that may be attributed to military service. There is insufficient evidence to attribute his misconduct to PTSD.”

After thorough review, the Board concluded your 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 your repeated misconduct had on the good order and discipline of your command. The Board noted that you were given multiple opportunities to address your conduct issues, but you continued to commit misconduct, which ultimately led to your discharge for a pattern of misconduct which began prior to the commencement of Operation Sharp Edge. Additionally, the Board concurred with the AO and determined that while there is post-service evidence, rendered temporally remote from your service by a civilian PhD clinician, of a diagnosis of PTSD that may be attributed to military service, there is insufficient evidence to attribute your misconduct to PTSD, particularly given inconsistencies between the record and your recollection of events, as well as your extended periods of UA and missing ship’s movement that occurred prior to the commencement of Operation Sharp Edge.

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. While the Board carefully considered the evidence you submitted in mitigation and commends 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 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

