



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. 4680-23
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 15 December 2023. 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 1 November 2023, which was previously provided to you. Although you were afforded an opportunity to submit an AO rebuttal, you chose not to do so.

You enlisted in the Navy and began a period of active duty on 15 August 2000. Between 21 February 2001 to 9 March 2001, you were assigned to █
█ Training. On 8 November 2001, an NCIS Report of Investigation indicated that you were arrested by civil authorities for one count of robbery and six counts of abduction. At the time, you were on an unauthorized absence (UA) status as a result of you being held by civil authorities. On 14 January 2002, you pleaded guilty in █ Court of two counts of abduction and robbery. On the same date, you were notified of the initiation of administrative

separation proceedings by reason of misconduct due to commission of a serious offense and you waived your procedural rights. Subsequently, your commanding officer recommended an Other Than Honorable (OTH) discharge characterization by reason of misconduct due to commission of serious offense. On 8 February 2002, the separation authority approved and ordered an OTH discharge characterization by reason of misconduct due to commission of a serious offense. On 15 February 2002, you were so discharged.

Post-discharge, you applied to the Naval Discharge Review Board (NDRB) for relief. The NDRB denied your request, on 17 November 2005, after determining 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 for a discharge upgrade and contentions that: (a) you were suffering from PTSD which caused severe mental health related issues, (b) you provided your medical evaluations which stipulates that your mental health impairment was caused by severe psychosis and PTSD you developed while on █ school, (c) you were tortured, drowned and beaten in █ school, (d) you have dealt with psychosis and PTSD since being incarcerated by civil court and discharged from the Navy with an OTH characterization. For purposes of clemency and equity consideration, the Board noted you did submitted copies of your medical diagnosis from Kaiser Permanente and two character letters of support.

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 in military service, or that he exhibited any psychological symptoms or behavioral changes indicative of a diagnosable mental health condition. Post service, he has received a civilian diagnosis for PTSD that is temporally remote to his military service, including two months of treatment. Unfortunately, his available records are not sufficiently detailed to provide a nexus with his misconduct. It is not clear how the stress of █ training would contribute to robbery and abduction. 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 concluded, "there is post-service civilian evidence 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 these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your civil conviction, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the discrediting effect it likely had on the Navy. 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, your

civilian diagnosis for PTSD is temporally remote to your military service and available records are not sufficiently detailed to provide a nexus with your misconduct. Further, it was not clear how the stress of █ training would contribute to robbery and abduction. 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, 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 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,

1/10/2024

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