



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. 6551-23

Ref: Signature Date

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Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to 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 limitations 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 27 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 an advisory opinion (AO) from a qualified mental health professional, dated 1 January 2024, and your response to the AO.

The Board determined that your personal appearance, with or without counsel, would not materially add to their understanding of the issues involved. Therefore, the Board determined that a personal appearance was not necessary and considered your case based on the evidence of record.

After a period of Honorable service, you reenlisted and commenced a second period of active duty with the Navy on 1 February 1989. On 27 July 1994, a special court-martial (SPCM) convicted you of unauthorized absence (UA) totaling 106 days, 21 specifications of larceny and wrongful

appropriation, forgery, and 7 specifications of writing bad checks. You were sentenced to confinement of 60 days, restriction and hard labor, forfeiture of pay, reduction to E-1, and a Bad Conduct Discharge (BCD). After the BCD was approved at all levels of review, on 8 February 1995, 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 contention that you incurred PTSD/mental health concerns, which might have mitigated the circumstances that led to your BCD, your PTSD led to your substance abuse and alcoholism, and you have overcome your drug abuse and alcoholism. For purposes of clemency and equity consideration, the Board noted you provided supporting documentation describing post-service accomplishments and an advocacy letter.

As part of the Board's review, a qualified mental health professional reviewed your request and provided the Board with an AO on 1 January 2024. 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. He submitted evidence of post-service diagnoses of PTSD and substance abuse that are temporally remote to service, however the nature and severity of his misconduct are not typical behaviors observed by one who has been diagnosed with PTSD. 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 sufficient evidence of a post-service diagnosis of PTSD. There is insufficient evidence that his misconduct could be attributed to a mental health condition or PTSD."

In response to the AO, you submitted a letter from ██████████ Services that provided additional information regarding the circumstances of your case. After reviewing your rebuttal evidence, the AO remained unchanged.

After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined your misconduct, as evidenced by your SPCM, outweighed the potential mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and determined that it showed a complete disregard for military authority and regulations. The Board also concurred with the AO that there is insufficient evidence your misconduct could be attributed PTSD or a mental health condition. As explained in the AO, you submitted evidence of post-service diagnoses of PTSD and substance abuse that are temporally remote to your service and the nature and severity of your misconduct are not typical behaviors observed by one who has been diagnosed with PTSD. Further, your personal statement is not sufficiently detailed to establish clinical symptoms or

provide a nexus with your misconduct. Finally, the Board noted that there is no evidence in your record, and you submitted none, to substantiate your contention that PTSD led to your substance abuse and alcoholism. The Board also considered that your SPCM underwent appellate review without any finding of error related to 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 a BCD. While the Board carefully considered the evidence you provided in mitigation and commends you post-service conduct, 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,

4/9/2024

