



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

██████████
Docket No. 6714-23
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 22 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). In addition, the Board considered an advisory opinion (AO) from 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 U.S. Navy and entered active duty on 2 June 1999. On 21 July 2000, you were convicted for first-degree misdemeanor DUI in state court. Subsequently, you were issued a counseling warning, on 4 October 2000, for unauthorized absence (UA), one incident of unfit for duty, and your conviction of first-degree misdemeanor DUI. Then, on 17 December 2000, you received non judicial-punishment for UA for less than 24 hours. You were issued a second counseling warning for your performance and conduct for your UA and DUI, and were recommended to attend Level II treatment.

Subsequently, you were again arrested for DUI on 30 March 2002 and 4 May 2002. While you were in the hands of the authorities, you were UA from 4-17 May 2002. You received your second NJP, on 20 May 2002, for the 13 days of UA.

Consequently, you were notified of administrative separation processing for pattern of misconduct. The CO made his recommendation to the Separation Authority (SA) that you be discharged for pattern of misconduct and be assigned a General (Under Honorable Conditions) (GEN) characterization. The SA accepted the recommendation and directed you be discharged. You were so discharged on 28 May 2002.

Post-discharge, you applied to the Naval Discharge Review Board (NDRB) for relief. The NDRB denied your request, on 20 March 2007, after determining your discharge was proper as issued. However, they did note an error on your DD Form 214 and directed the changes be made.

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 contention that you were assured by your command that your discharge would all you to access the GI bill and you were unaware at the time of discharge you were experiencing service connected PTSD. You contend the incidents contributing to your PTSD involves deployment onboard ██████████ during the mission ██████████ where the ship delivered payload of ordnance which covered the entire flight deck of the ship while it flew sorties in the ██████████ in one night only. You believe the death and destruction they were responsible for has never left your mind since that night. For purposes of clemency and equity consideration, the Board noted you did not provide supporting documentation describing post-service accomplishments or advocacy letters.

As part of the Board review process, the BCNR Physician Advisor who is a licensed clinical psychologist (Ph.D.), reviewed your contentions and the available records and issued an AO dated 6 January 2024. The Ph.D. stated in pertinent part:

Petitioner submitted a letter dated September 2023 from a Licensed Mental Health Counselor who indicated that she had been seeing the Petitioner weekly for PTSD related to having “seen deaths of Iraqis as a result of bombings from his ship while deployed.” 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 a post-service diagnosis of PTSD that is temporally remote to service. Given his repetitive DUI’s and arrests, it appears as though his misconduct was more likely caused by alcohol abuse or dependence. 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 Ph.D. 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 two NJPs and three DUIs, outweighed these mitigating factors. In making this finding, the Board considered the brevity of your service during which you committed these multiple offenses and the seriousness of the offenses. Further, the Board considered the likely discrediting effect your three DUIs had on the Navy. Additionally, the Board concurred with the AO and determined there is insufficient evidence that your misconduct could be attributed to a mental health condition. As explained in the AO, you submitted evidence of a post-service diagnosis of PTSD that is temporally remote to service. Given your repetitive DUI’s and arrests, it appears as though your misconduct was more likely caused by alcohol abuse or dependence. Finally, the Board concluded that your discharge was proper and equitable under standards of law and discipline and that the discharge accurately reflects your conduct during your period of service, which was terminated by your separation with a GEN.

As a result, the Board determined significant negative aspects of your service outweigh the positive aspects and continues to warrant an GEN 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 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,

4/1/2024

