



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. 6745-23
1134-22
8619-16
Ref: Signature Date

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Dear ██████████

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.

Because your application was submitted with new evidence not previously considered, the Board found it in the interest of justice to review your application. A three-member panel of the Board, sitting in executive session on 22 March 2024, has carefully examined your current 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 25 August 2017 guidance from the Office of the Under Secretary of Defense for Personnel and Readiness (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) 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.

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

You previously applied to this Board and were denied on 7 November 2017 and 13 May 2022. The facts of your case remain substantially unchanged. With your request for reconsideration, you provided post-discharge mental health records as well as evidence of your current disability.

The Board carefully considered all potentially mitigating factors to determine whether the interests of justice warrant relief in your case in accordance with the Wilkie Memo. These included, but were not limited to, your desire to upgrade your discharge to “Honorable” and to change your narrative reason for separation to “Secretarial Authority” with a reentry code of “RE-1” in addition to your contentions submitted via your counsel’s legal brief, as well as your personal statements.

Because you also contend that a mental health condition affected the circumstances of your misconduct and discharge, the Board also considered the AO, which noted your in-service hospitalizations for psychiatric care and advised the following:

Petitioner was appropriately referred for psychological evaluation during his enlistment and properly evaluated during two inpatient hospitalizations. His [PD] diagnosis was based on observed behaviors and performance during his period of service, the information he chose to disclose, and the psychological evaluations performed by the mental health clinician. A [PD] diagnosis is pre-existing to military service by definition, and indicates lifelong characterological traits unsuitable for military service. Although his record states that the [PD] did not exist prior to his enlistment, this is an error in the first page of the Discharge Narrative Summary, as noted by the second page which states that his disorder is pre-existing. Unfortunately, he has provided no medical evidence of another mental health condition. His in-service misconduct appears to be consistent with his diagnoses personality disorder, rather than evidence of PTSD or another mental health condition incurred in or exacerbated by military service. 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, “it is my clinical opinion there is insufficient evidence of a mental health condition that may be attributed to military service. There is insufficient evidence to attribute his misconduct to a mental health condition, other than personality disorder.”

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 NJPs and SPCM, 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. With respect to your mental health contentions, the Board concurred with the AO that there is insufficient evidence of a mental health condition that may be attributed to military service or your misconduct, other than personality disorder. Further, the Board observed that crimes such as larceny and falsification of official documents

would not normally be mitigated by a mental health condition. With respect to your argument regarding rehabilitation, the Board found ample evidence in your record that you received counseling as well as the opportunity for mental health services during your military service, yet failed to comport your behavior as necessary to cease your continued misconduct in spite of the opportunity for corrective action. Therefore, the Board was not persuaded by your arguments.

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 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,

4/10/2024

