



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. 6755-23
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 Board waived the statute of limitation 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 5 April 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, and applicable statutes, regulations, and policies, to include to 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) 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 enlisted in the Navy and began a period of active duty on 28 December 1988. On 11 July 1990, you absented yourself without authority and remained absent until your apprehension on 26 July 1991. You were convicted by a special court-martial (SPCM), on 4 September 1991, for violating Article 86 of the Uniform Code of Military Justice (UCMJ) due to your prolonged unauthorized absence (UA). Consequently, you were notified of processing for administrative separation by reason of misconduct due to commission of a serious offense, and you elected to

waive your rights to consult legal counsel, to request a hearing before an administrative separation board, and to submit a statement on your behalf for consideration. The recommendation for your discharge under Other Than Honorable (OTH) conditions was forwarded for review and approved by the Assistant Secretary of the Navy (Manpower and Reserve Affairs) on 10 August 1992. You were so discharged on 28 August 1992.

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 to “Honorable” as well as change your narrative reason for separation to “Secretarial Authority” and your reentry code to “RE-1.” You contend that you faced challenges during your deployment and were profoundly affected by grief and depression following the loss of your mother during your military service. You explain that you did not consider the impact your mental health might have had on your decision making process and misconduct until years later when someone inquired about your mental health during your military service. You assert that you were young and impressionable and that your command failed to offer necessary guidance and support during your period of mental distress. You also argue that you were not provided sufficient opportunity to overcome your deficiencies and challenges. You believe that the fundamental reason for your discharge was “greatly deficient” and that your command did not possess proper authority to separate you in such a hasty manner. You claim that you have lived your life as responsibly and earnestly as possible since your discharge and believe that the adverse characterization no longer serves a useful purpose in contrast to your life now. For purposes of clemency and equity consideration, the Board noted you submitted only your counsel’s brief, your service health records, and your official military personnel file records.

Because you contend that post-traumatic stress disorder (PTSD) or another mental health condition affected the circumstances of your misconduct and discharge, the Board also considered the AO provided by a licensed clinical psychologist. The AO noted in pertinent part:

There is no evidence that 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 did not submit any medical evidence in support of his claim. 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 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 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. Additionally, unexpectedly absenting yourself from your command placed an undue burden on your chain of command and fellow service members, and

likely negatively impacted mission accomplishment. Finally, 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, you did not submit any of the supporting medical evidence of your claim.

With respect to your contention that you were not provided assistance by your chain of command, the Board likewise found insufficient evidence that you sought such assistance or made your command aware of any problems or concerns prior to absenting yourself on the eve on a significant operational deployment. The Board further observed that you were represented by qualified military defense counsel during your SPCM trial who, under a presumption of regularity with respect to your counsel's competence regarding trial preparation, would have assisted you regarding any mitigating or extenuating factors relevant to your extended period of UA in order to present such matters during the sentencing phase of your trial proceedings. In light of the aggravating factors of the lengthy period of your unauthorized absence, the timing of your absence prior to your ship's operational deployment, and your return by apprehension, the Board interpreted that lack of a punitive discharge as highly indicative that matters in mitigation and extenuation temporally relevant to your absence were already considered in your adjudged sentence and subsequent administrative separation proceedings. With respect to your argument that your discharge was fundamentally deficient due to not permitting time for you to address deficiencies or overcome challenges, the Board expressly found that no such requirement applies to the basis for which you were processed – specifically, commission of a serious offense. The Board determined you committed an offense serious enough to warrant your immediate discharge, whether through punitive or administrative means.

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,

4/25/2024

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