



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. 7166-23
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 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 18 April 2024. The names and votes of the members of the panel 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, applicable statutes, regulations, and policies, to include the Kurta 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 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.

A review of your record shows that you enlisted in the Navy and entered active duty on 25 September 1977. On 8 March 1979, you received non-judicial punishment (NJP) for three specifications of orders violations, that included wrongful use of marijuana, and an additional offense of resisting apprehension. On 14 April 1980, you were convicted by special court martial (SPCM) of six periods of unauthorized absence (UA) totaling 70 days, escaping custody, two specifications of disobedience, two specifications of breach of peace, and assault. On 11 June 1980, you received NJP for seven days of UA.

In July 1980, you were hospitalized for 15 days for depression, suicidal ideation, and alcohol/drug dependence. You were subsequently diagnosed with an emotionally unstable personality disorder upon release from the hospital. In August 1980, you were evaluated by a military psychologist, in which you endorsed heavy use of drugs and alcohol; however, no formal mental health disorder was diagnosed. On 26 January 1981, you were convicted by summary court martial (SCM) of two periods of UA totaling 128 days. You subsequently received NJP for wrongful possession of a motorcycle kick-starter.

Ultimately, on 13 February 1981, you were discharged from the Navy with an Other Than Honorable (OTH) characterization of service. Your Certificate of Release or Discharge from Active Duty (DD Form 214) states you were discharged due to misconduct based on frequent involvement of a discreditable nature with civil or military authorities.

In 1982, you petitioned the Naval Discharge Review Board (NDRB), asking to change your characterization of service to Honorable. The NDRB denied your request after finding your discharge proper and equitable. The NDRB noted your misconduct resulting in three NJPs, a SCM, and a SPCM showed sufficient evidence of frequent involvement of a discreditable nature that clearly demonstrated a complete disregard for military discipline.

You request the Board upgrade your discharge to a medical discharge due to incurring hepatitis on active duty, as a result of unsanitary conditions that led to hospitalizations on active duty, and a mental health concern (MHC). 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 and Wilkie Memos. These included, but were not limited to, your desire for a disability discharge and contentions that you deserve a medical discharge because you suffered from a disability condition while in-service. For purposes of clemency and equity consideration, the Board noted you did not provide any evidence of the medical condition, how your alleged condition contributed to your misconduct discharge, or post-service accomplishments.

Based on your assertions that you incurred a mental health concern (MHC) during your military service, which might have mitigated your discharge character of service, a qualified mental health professional reviewed your request for correction to your record and provided the Board with an AO. The AO stated in pertinent part:

During military service, the Petitioner was evaluated by military mental health providers, including during a two-week hospitalization. He denied mental health concerns. His personality disorder diagnosis was based on observed behaviors and performance during his period of service, the information he chose to disclose, and the psychological evaluation performed by the mental health clinician. A personality disorder diagnosis is pre-existing to military service by definition, and indicates lifelong characterological traits unsuitable for military service. His in-service misconduct appears to be consistent with his diagnosed personality disorder, rather than evidence of another mental health condition incurred in or exacerbated by military service.

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 the potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your NJPs, SCM, 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. Further, the Board concurred with the AO that there is insufficient evidence to attribute your misconduct to a mental health condition other than personality disorder. As explained in the AO, your in-service misconduct appears to be consistent with your diagnosed personality disorder, rather than evidence of another mental health condition incurred in or exacerbated by military service. Finally, the Board noted that your OTH discharge for misconduct disqualified you from disability processing, even if there was evidence of a unfitting disability condition in your record.

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. Even in light of the Kurta 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. 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,

5/7/2024

