



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. 7584-23

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 3 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 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)/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). The Board also considered an advisory opinion (AO) from a qualified mental health professional, dated 15 February 2024. Although you were provided an opportunity to comment on the AO, you chose not to do so.

You entered active duty with the Navy on 24 November 1997. On 26 March 1999, you received non-judicial punishment (NJP) for unauthorized absence (UA) totaling two days and missing ship's movement. On 13 September 2000, you completed the Alcohol IMPACT course. On 1 February 2001, you received NJP for failure to obey an order, incapacitated for duty, and underage drinking. On 26 April 2001, you were formerly counseled on your substandard performance due to your indulgence of alcohol resulting in drunkenness, disorderly conduct, and underage drinking.

On 2 August 2001, you completed your command's Rehabilitation Treatment Program. As a result, you were provided an aftercare plan and informed that any future substance abuse related incidents may result in administrative separation. On 4 September 2001, a summary court-martial (SCM) convicted you of two specifications of assault, failure to go to appointed place of duty, and communicating a threat. Subsequently, you were notified of pending administrative separation action by reason of misconduct due to a pattern of misconduct, commission of a serious offense, and alcohol rehabilitation failure. You elected to consult with legal counsel and subsequently requested an administrative discharge board (ADB). The ADB found that you committed misconduct and recommended you receive a General (Under Honorable Conditions) (GEN) characterization of service. The separation authority concurred with the ADB and directed a GEN discharge by reason of misconduct due to a pattern of misconduct. On 27 November 2001, you were so discharged.

Post-discharge, you applied to the Naval Discharge Review Board (NDRB) for a discharge upgrade. On 13 October 2005, the NDRB denied your request after determining that your discharge was proper as issued.

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 contentions that you incurred post-traumatic stress disorder (PTSD) due to separation from your family, divorce from your wife, witnessing a fatal training accident, learning of the █ bombing, and your alcohol abuse was a result of PTSD. For purposes of clemency and equity consideration, the Board noted you provided a personal statement and documentation describing post-service accomplishments.

As part of the Board's review, a qualified mental health professional reviewed your request and provided the Board with an AO on 15 February 2024. The mental health professional stated in pertinent part:

Petitioner was evaluated and provided treatment for alcohol abuse disorder. There is no evidence that he was diagnosed with another mental health condition in military service, or that he exhibited any psychological symptoms or behavioral changes indicative of another mental health condition. He has provided no medical evidence in support of his claims. Unfortunately, his personal statement is not sufficiently detailed to establish clinical symptoms in service 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) may aid in rendering an alternate opinion.

The AO concluded, "it is my clinical opinion there is insufficient evidence of a diagnosis of PTSD or another mental health condition that may be attributed to military service. There is insufficient evidence to attribute his misconduct to PTSD or another mental health condition."

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

NJPs and SCM, outweighed the potential mitigating factors. In making this finding, the Board considered the likely 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 your misconduct could be attributed to PTSD or a mental health condition. The Board agreed with the AO that available records and your personal statement are not sufficiently detailed to establish clinical symptoms in service or provide a nexus with your misconduct. Finally, the Board noted you provided no evidence, other than your personal statement, to substantiate your contentions.

As a result, the Board concluded significant negative aspects of your service outweigh the positive aspects and continues to warrant a GEN characterization. While the Board carefully considered the evidence you submitted in mitigation and commends your post-discharge good character and 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,

4/19/2024

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