



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. 7767-23
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 8 May 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 18 March 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 20 July 1998. On 2 June 1999, you received non-judicial punishment (NJP) for six specifications of failure to go to appointed place of duty. On 28 October 1999, you received NJP for nine specifications of failure to go to appointed place of duty, willful disobedience, and disrespect toward a petty officer. On 2 November 1999, you received a medical evaluation, which diagnosed you with an adjustment disorder and a personality disorder. 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 personality disorder. After you waived your rights, your commanding officer (CO) forwarded your package to the separation authority (SA) recommending your discharge with an Other Than Honorable (OTH) characterization of service. The separation authority (SA)

approved the CO's recommendation and directed an OTH discharge by reason of misconduct due to a pattern of misconduct. On 12 November 1999, you were so discharged.

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 PTSD/MHC during military service due to an explosive canister landing close you during training, you were unfairly charged with missing muster, a statement you made was misinterpreted as suicidal intent, and you would like to receive veterans' benefits. For purposes of clemency and equity consideration, the Board noted you provided an advocacy letter 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 18 March 2004. The mental health professional stated in pertinent part:

Petitioner was appropriately referred for psychological evaluation and properly evaluated during his enlistment. His personality disorder diagnosis was based on his observed behaviors during service, the information he chose to disclose, and the mental health evaluation performed. He also received an adjustment disorder diagnosis, indicating difficulty adjusting to military stressors, in addition to characterological troubles. There is insufficient evidence of a diagnosis of PTSD that may be attributed to service. He has provided no additional medical evidence to support his claims. His misconduct appears to be consistent with his diagnosed personality disorder, rather than evidence of another mental health condition. 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 that may be attributed to military service. There is insufficient evidence to attribute his misconduct to PTSD or another 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 your misconduct, as evidenced by your NJPs, outweighed the potential mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the likely negative impact your conduct had on the good order and discipline of your command. The Board found that your conduct showed a complete disregard for military authority and regulations. The Board also concurred with AO that there is insufficient evidence to attribute your misconduct to PTSD or a mental health condition. As pointed out in the AO, you were appropriately referred for psychological evaluation and properly evaluated during your enlistment. Additionally, you provided no additional medical evidence to support your claims. Further, the Board noted that there is no evidence in your record, and you submitted none, to support your contentions that you were treated unfairly or that you were misdiagnosed. Finally, absent a material error or injustice, the Board declined to summarily upgrade a discharge solely for the purpose of facilitating veterans' benefits, or enhancing educational or employment opportunities.

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 provided in mitigation and commends you for your post-discharge accomplishments, 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,

5/22/2024

