



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. 8018-23
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 15 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) (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) furnished by a qualified mental health professional. Although you were provided an opportunity to respond to the AO, you chose not to do so.

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.

You enlisted in the Navy and commenced active duty on 23 July 1990.

On 24 May 1991, you were issued an administrative remarks (Page 13) counseling concerning deficiencies in your performance and/or conduct. You were advised that any further deficiencies

in your performance and/or conduct may result in disciplinary action and in processing for administrative discharge. On 11 July 1991, you received non-judicial punishment (NJP) for resistance and breach of arrest. On 11 October 1991, you were again issued Page 13 counseling concerning deficiencies in your performance and/or conduct. On 22 October 1991, you received NJP for unauthorized absence (UA), disobeying a lawful order, and dereliction of duty. You received three more page 13 counselings concerning deficiencies in your performance and/or conduct on 16 October 1991, 29 October 1991, and 1 November 1991 respectively. You received NJP on 21 February 1992 for disobeying a lawful order. On 6 March 1992, you received another page 13 counseling for substandard performance. On 12 October 1992, you received NJP for dereliction in performance of duties. On 21 October 1992, you received NJP for failure to obey an order or regulation.

Consequently, on 15 December 1992, you were notified of pending administrative separation processing with an Under Other Than Honorable conditions (OTH) discharge by reason of misconduct due to commission of a serious offense and pattern of misconduct. After receiving this notice, you exercised your right to consult with counsel.

On 16 January 1993, you received page 13 counseling indicating your recommendation for advancement to EM3 had been withdrawn. On 22 January 1993, you received NJP for UA.

On 1 February 1993, after consulting with counsel, you waived your rights submit a statement or have your case heard by an administrative discharge board (ADB). The Separation Authority subsequently directed your discharge with an OTH characterization of service, and you were so discharged on 23 March 1993.

Post-discharge, you applied twice to the Naval Discharge Review Board (NDRB) for a discharge upgrade. The NDRB denied your requests for an upgrade, on 11 September 1995 and 12 May 2003, based on their determinations 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 change your discharge characterization of service and your contentions that you had no representation and were mistreated and misunderstood, that for your first offense, you were caught up in an incident where other people were fighting and then labeled as a trouble-maker, which caused a decrease in your productivity, which caused more alienation, which you believe caused your PTSD, that your last write-up was unfair because your roommate did not wake you up, causing you to oversleep and miss morning quarters, and that you should have been advanced to EM3 because you passed the Petty Officer Third Class exam. For purposes of clemency and equity consideration, the Board considered your statement and the technical and personal growth certificates you provided.

As part of the Board's review process, a qualified mental health professional reviewed your contentions and the available records and issued an AO dated 28 February 2024. The AO stated in pertinent part:

Petitioner contends he incurred Post Traumatic Stress Disorder (PTSD) and other mental health concerns from harassment during military service, which might have mitigated the circumstances of his separation.

Petitioner contended he did not report in-service mental health concerns due to fear of reprisal. He claimed that he was falsely accused and did not engage in the misconduct, but was wrongly identified and then viewed negatively, which resulted in further harassment and unfair treatment. He submitted evidence of post-service accomplishment.

There is no evidence that he was diagnosed with a mental health condition in military service, or that he exhibited any psychological symptoms or behavioral changes indicative of a diagnosable 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, particularly as he denies misconduct or claims its adjudication was unduly harsh.

The AO concluded, “it is my clinical opinion there is insufficient evidence 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 your potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your NJPs, outweighed these mitigating factors.

In making this finding, the Board considered the seriousness of your misconduct and the likely negative impact your repeated misconduct had on the good order and discipline of your command. The Board noted that you were given multiple opportunities to address your conduct issues, but you continued to commit misconduct, which ultimately led to your separation for a pattern of misconduct. Additionally, the Board concurred with the AO and determined that there is insufficient evidence a diagnosis of PTSD or another mental health condition that may be attributed to military service and insufficient evidence to attribute your misconduct to PTSD or another mental health condition. Finally, the Board noted you provided no evidence to substantiate your contentions.

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 and commends 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.

With respect to your contention that you should have been advanced to E-4 because you passed the exam, the Board noted that passing the advancement exam is only one of many factors used to compute your final multiple score (FMS), which is used for enlisted promotions up to E-6. Additionally, the Board noted that your commanding officer withdrew his recommendation for advancement following your fifth NJP.

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

