



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. 8404-23
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 3 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 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.

You enlisted in the Navy and began a period of active duty on 2 September 1989. While still in recruit training, you were absent without authority between 26 October 1989 and 13 November 1989, although your record does not indicate that you were punished for this misconduct. In December of 1989, you received administrative counseling advising you that you were being retained in spite of deficiencies, which included disobeying a lawful order from a chief petty officer. You were then subject to your first nonjudicial punishment (NJP), on 6 April 1990, for violations of the Uniform Code of Military Justice (UCMJ) under Article 86 for a period of unauthorized absence (UA) and under Article 87 due to missing your ship's movement that same day. You were also punished under Article 113 for sleeping on watch on three separate days.

You were again administratively counseled that you would be retained but were expected to correct your conduct deficiencies.

Another administrative counseling entry, on 31 January 1991, described additional deficiencies in performance and conduct, to include your inability to complete assigned tasks as well as a lack of drive and initiative toward your military duties. Your second NJP, on 6 June 1991, was for similar offenses as your first, with two specifications under Article 86 for UA periods and also Article 87 for again missing your ship's movement. A poorly legible copy of a naval message from your command reported that you had been notified of processing for administrative separation on the basis of commission of a serious offense and pattern of misconduct, and that you were being recommended for an Other Than Honorable (OTH) characterization of service. This request was approved via a naval message from the Bureau of Naval Personnel for the primary reason of pattern of misconduct. You were so discharged on 9 August 1991.

On 10 April 1995, the Naval Discharge Review Board (NDRB) considered your initial application for relief wherein you stated that you had no criminal record and wanted to better yourself in society to enable you to better provide for your children. The NDRB found your evidence of post-discharge character insufficient and denied your request.

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 change your narrative reason for separation as well as your contentions that you entered military service in perfect health but were mentally affected by events which took place during your service. Specifically, you state that you were "reprimanded for emotions" that you couldn't control at that time, when you were young and immature and experiencing marital trouble during your military service, but you believe you have turned your life around to become a better person than who you were when you were discharged. You believe that your characterization of service does not accurately reflect the positive contributions you have made to society, which you state includes volunteering as a barber for a non-profit organization, giving free haircuts to children, mentoring youth, and helping feed the homeless. Finally, you desire to qualify for veterans' benefits with your upgrade. For purposes of clemency and equity consideration, you submitted a personal statement, a generalized letter confirming your volunteerism, and transcripts of your barber training and licensing.

Because you contend, in part, that PTSD or another mental health condition contributed to your misconduct and resulting discharge, the Board also considered the AO. The AO stated in pertinent part:

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. 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.”

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 NJPs, 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 regarding the overall lack of evidence supporting your mental health contentions. As explained in the AO, you provided no medical evidence in support of your claims and your personal statement is not sufficiently detailed to establish clinical symptoms in service or provide a nexus with your misconduct. 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 submitted 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 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,

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