



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
701 S. COURTHOUSE ROAD, SUITE 1001
ARLINGTON, VA 22204-2490

██████████
Docket No. 8524-23
Ref: Signature Date

██
██
██

Dear ██████████:

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 10 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 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, 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). In addition, the Board considered an advisory opinion (AO) from 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 U.S. Navy and entered active duty on 5 August 1999. On 1 August 2000, you received non-judicial punishment (NJP), for failure to obey an order or regulation by

underage drinking. On 16 November 2000, you received your second NJP for unauthorized absence (UA), insubordinate conduct toward a superior petty officer and assault. As a result, you were processed for administrative separation due to commission of a serious offense and personality disorder. The Commanding Officer (CO) made his recommendation to the Separation Authority (SA) that you be discharged with a General (GEN) characterization. The SA accepted the recommendation and directed you be discharged for commission of a serious offense. You were so discharged on 12 January 2001.

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 narrative reason for separation to “hardship or medical reasons” and contentions that you witness a young man in boot camp cut his throat and wrist, it was traumatic to you to the point you could not sleep, you were told you could go home immediately or you could wait six months for a medical discharge, and they made you decide right away and you were not able to consult with anyone. For purposes of clemency and equity consideration, the Board considered the evidence you provided in support of your application.

As part of the Board review process, the BCNR Physician Advisor who is a licensed clinical psychologist (Ph.D.), reviewed your contentions and the available records and issued an AO dated 29 February 2024. The Ph.D. stated in pertinent part:

Petitioner was appropriately referred during his enlistment and properly evaluated during a comprehensive psychological assessment. His personality disorder and other mental health diagnoses were based on observed behaviors and performance during his period of service, the information he chose to disclose to the mental health clinician, and the psychological evaluation performed. While there is evidence in the service record to support his purported trauma, his diagnosis of PTSD is temporally remote to his military service. His in-service misconduct appears to be consistent with his diagnosed personality disorder. Furthermore, it is difficult to consider how PTSD would account for his misconduct, given his statement that his behaviors were exaggerated. 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 Ph.D. concluded, “it is my clinical opinion there is post-service evidence from a civilian provider of a diagnosis of PTSD that may be attributed to military service. There is in-service evidence of mental health diagnoses (Dysthymic Disorder and Adjustment Disorder) that may be attributed to military service. There is insufficient evidence to attribute his misconduct to PTSD or another mental health condition, other than his diagnosed personality disorder.”

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 and determined

there is insufficient evidence to attribute your misconduct to PTSD or another mental health condition, other than your diagnosed personality disorder. As explained in the AO, it is difficult to consider how PTSD would account for your misconduct, given your statement that your behaviors were exaggerated. Finally, the Board concluded that your discharge was proper and equitable under standards of law and discipline and that the discharge accurately reflects your conduct during your period of service, which was terminated by your separation with a GEN. The Board determined that you already received a large measure of clemency when the Navy discharged you with a GEN characterization despite your record of misconduct.

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, 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,

4/22/2024

█