



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

██████████
Docket No. 8888-23
Ref: Signature Date

████████████████████
████████████████████
████████████████████
████████████████████
████████████████████

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 31 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 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 1 August 1997. You were granted a waiver for a pre-service offense of driving under the influence (DUI). On 4 June 1998, you were convicted by Summary Court-Martial (SCM) for violations of the Uniform Code of Military Justice (UCMJ) that included three specifications under Article 86 for three periods of multi-day unauthorized absences (UAs) totaling 31 days and under Article 87 for missing

movement. You served your sentence of 20 days confinement and continued without further incident until again absenting yourself without authority on 4 February 1999. Although you voluntarily returned to military authority on 8 February 1999, rather than join your ship as it departed underway, you again absented yourself on 23 February 1999 and remained absent for more than seven months until your apprehension and return to military authority on 19 October 1999. During this period, you missed your ships movement on five occasions.

Consequently, on 3 January 2000, you were convicted by Special Court-Martial (SPCM) for additional UCMJ offenses under Articles 86 and 87 and sentenced to a 90-day period of confinement, reduction to the paygrade of E-1, and a Bad Conduct Discharge (BCD).

At some point shortly after your release from confinement, you again absented yourself without authority for which you were then subject to nonjudicial punishment (NJP) on 21 March 2000. You were permitted to begin appellate leave on 23 May 2000.

While still on appellate leave in January of 2002, you were shot in the arm. The following month, you were in an automobile accident. You received health care, to include psychiatric care from Naval Medical Clinic (NMC) ██████████. On 4 November 2002, a medical letter documented your diagnosis of depressive disorder and opined that “it is felt his depressive disorder may have contributed to his offenses in the past.” You also undertook a substance abuse treatment plan in January 2003 and continued to receive treatment for Major Depression from December 2005 through October 2006, to include a period of inpatient treatment in July 2006. Although the appellate review of your SPCM findings and sentence is not documented in your service records, your punitive discharge was ordered executed. You were so discharged on 24 January 2007.

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 to “Honorable” and to change your narrative reason for separation to “Secretarial Authority.” You contend that you were suffering from Major Depressive Disorder (MDD), which you assert contributed to and should mitigate your UA periods and resulting BCD. For purposes of clemency and equity consideration, the Board considered the evidence you submitted in support of your application.

Because you contend that one or more mental health conditions affected the circumstances of the misconduct which resulted in your discharge, the Board also considered the AO. The AO stated in pertinent part:

Petitioner was appropriately referred for psychological evaluation during his enlistment and properly evaluated on multiple occasions over an extended period of time. His Alcohol Use and Major Depressive Disorder diagnoses were based on observed behaviors and performance during his period of service, the information he chose to disclose, and the psychological evaluations performed. Unfortunately, there is insufficient evidence to attribute all of his misconduct to a mental health condition, given pre-service behavior that appears to have continued in service.

While his military psychiatrist did express the opinion that his UA may be attributed to his depression symptoms, he also acknowledged the potential unreliability of the Petitioner's report. There are inconsistencies in the Petitioner's reported history of alcohol use, such as his in-service report of problematic alcohol use following entry into military service, which does not consider his pre-service DUI. 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 in-service evidence of a mental health condition (Major Depressive Disorder) that may be attributed to military service in part. There is insufficient evidence to attribute all of his misconduct to a mental health condition."

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 NJP, SCM, and SPCM, 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. Additionally, the Board concurred with rationale supporting the clinical opinion that there is in-service evidence of a mental health condition (MDD) that may be attributed to military service in part but insufficient evidence to attribute all of your misconduct to a mental health condition. In this regard, the Board found insufficient evidence to identify a link between your periods of UA and your mental health diagnoses, especially with respect to your prolonged absence of over seven months. Additionally, the Board noted that the injuries you experienced during your appellate leave occurred later in time than your SPCM conviction and, therefore, have no logical nexus with the misconduct which resulted in your discharge. Finally, the Board noted you were given an opportunity to correct your conduct deficiencies but chose to continue to commit misconduct.

As a result, the Board concluded your conduct constituted a significant departure from that expected of a service member and continues to warrant a BCD. 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 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,

6/24/2024

