



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

██████████
Docket No. 9486-23

Ref: Signature Date

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Dear Petitioner:

This is in reference to your application for correction of your husband's 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 8 March 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). In addition, the Board considered the advisory opinion (AO) of 31 August 2022, issued as part of your previous application to the Board. You were previously provided an opportunity to respond to the AO and chose not to do so.

The Board determined that your personal appearance, with or without counsel, would not materially add to the understanding of the issues involved. Therefore, the Board determined a personal appearance was not necessary and considered your request based on evidence of record.

You previously applied to this Board and were denied on 5 April 2022 and 31 October 2022.

Your husband's summary of service remains unchanged from that addressed in the letter mailed to you in November 2022 documenting the Board's previous decision. Of relevant note with respect to your contentions, your husband was administratively separated for the reason of "Unsuitability" following a diagnosis of an emotionally unstable personality and a recommendation by a medical board for his discharge. Six days prior to his administrative discharge, he was subject to nonjudicial punishment (NJP) following an unauthorized absence (UA) for a period of 111 days. In addition to having his recommendation for advancement to the grade of E-4 withdrawn during his UA period, his NJP punishment on 1 April 1969 included a reduction to the grade of E-2. He was honorably discharged, on 7 April 1969, in the grade of E-2.

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 have your husband's rank at the time of his discharge reinstated to the grade of E-3, as it was prior to his NJP, and your contentions of clemency with respect to the impact of his condition on his life and the impact of his mental health condition and terminal illness on you and your family. For purposes of clemency and equity consideration, the Board considered the evidence you submitted in support of your application.

Because of your claim that your husband suffered from PTSD, an AO issued as part of your previous application was considered by the Board. The AO stated in pertinent part:

There is evidence that he was diagnosed with a mental health condition in military service (anxiety reaction and personality disorder). Post-service, he was diagnosed with PTSD and MDD, which the VA attributed to military service. It is possible that the mental health symptoms recognized during military service were conceptualized as PTSD and MDD post-service, with the passage of time and improved understanding of mental health. It is possible the mental health symptoms he experienced during military service contributed to some of his misconduct. For example, his decision to UA may have been influenced by anxiety or depression symptoms, in addition to the personal stressors he experienced at the time. It is possible his alcohol consumption increased due to mental health symptoms, contributing to misconduct by driving while intoxicated. It is difficult to attribute car theft and driving without a valid license to a mental health condition, as these behaviors appear related to poor judgment rather than a response to anxiety or depression symptoms.

The AO concluded, "it is my considered clinical opinion there is in-service evidence of a mental health condition (anxiety reaction and personality disorder). There is post-service evidence of a diagnosis of PTSD that may be attributed to military service. There is evidence some of his misconduct could be attributed 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 husband's misconduct, as evidenced by his NJP, outweighed these mitigating factors. In making this finding, the Board

considered the seriousness of your husband’s misconduct and found that his conduct showed a complete disregard for military authority and regulations. Whereas the matters you submit for consideration might have factored into a potential request for an upgraded characterization of service on the basis of clemency, the Board observed that your husband received a fully “Honorable” discharge, notwithstanding the misconduct which preceded his discharge for unsuitability. With respect to your husband’s NJP and his reduction to E-2, although his PTSD might have mitigated the severity of his misconduct with respect to his discharge, the Board found that his mental health condition did not negate the fact that he committed a chargeable, serious offense under the Uniform Code of Military Justice (UCMJ) nor was his punishment of reduction from E-3 to E-2 of such severity as to constitute an injustice. As a result, the Board found no evidence of error or injustice in your husband’s reduction to E-2 and, necessarily, concluded that his discharge in the grade of E-2 was neither improper nor unjust.

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 husband’s misconduct. Accordingly, given the totality of the circumstances, the Board determined that your request does not merit relief.

The Board deeply sympathized with everything that you and your family have experienced as a result of your husband’s Vietnam era service and regretted that it could not render a more favorable decision.

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,

3/27/2024

