



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. 10490-23
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 10 July 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.

You enlisted in the U.S. Navy and began a period of active duty on 12 April 2000. Upon entry to active duty, you were granted a waiver for minor in possession of alcohol and disorderly conduct.

On 7 February 2001, you completed three days of Prevent training. On 20 March 2001, you received non-judicial punishment (NJP), for unauthorized absence (UA), larceny, and drunkenness, incapacitation for performance of duty through wrongful indulgence in intoxication

liquor. You were issued a counseling warning for your performance and notified that further deficiencies in your performance or conduct may result in disciplinary action and processing for administrative separation. You received your second NJP, on 13 August 2001, for UA and missing ship's movement. You received your second counseling warning after your NJP. On 27 November 2001, you received your third NJP, for dereliction in the performance of duties. Then, on 20 August 2002, you received your fourth NJP, for drunkenness incapacitation for performance of duties through prior wrongful indulgence in intoxicating liquor. On 29 October 2002, you received your final NJP, for failure to obey a lawful order, disrespectful in language towards a petty officer, failure to obey a lawful order, and breaking restriction.

Consequently, you were notified of administrative separation processing for pattern of misconduct, misconduct and commission of a serious offense. You waived your right to an administrative separation board and your Commanding Officer (CO) made his recommendation to the Separation Authority (SA) that you be assigned an Other Than Honorable (OTH) characterization. The SA accepted the recommendation and directed you be discharged for pattern of misconduct. You were so discharged on 18 November 2002.

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 for a discharge upgrade and contentions that your undiagnosed PTSD created substance abuse and this led to difficulty in working with others. 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, a licensed clinical psychologist (Ph.D.) reviewed your contentions and the available records, and issued an AO dated 2 May 2024. The Ph.D. stated in pertinent part:

There is no evidence of a mental health diagnosis in military service. Post-service, the Petitioner has received treatment for PTSD and other mental health concerns. The PTSD diagnosis has been attributed to purported trauma during military service. Other mental health diagnoses appear unrelated to military service. Unfortunately, available records are not sufficiently detailed to establish a nexus with his misconduct, given pre-service behavior that appears to have continued in service. 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 of a diagnosis of PTSD 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 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 insufficient evidence to attribute your misconduct to PTSD or another mental health condition. As explained in the AO, available records are not sufficiently detailed to establish a nexus with your misconduct, given your pre-service behavior that appears to have continued in service. Finally, the Board noted you were given multiple opportunities to correct your conduct deficiencies but chose to continue to commit misconduct, which ultimately led to your discharge.

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. 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 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,

7/22/2024

