



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

██████████
Docket No. 10693-23
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 17 June 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 and your response to the AO.

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 Reserve and entered active duty on 17 August 1987. On 31 December 1989, you were not recommended for advancement. On 30 June 1990, you acknowledged your last evaluation report containing derogatory contents and elected to submit a

statement. On 16 August 1990, you were notified that you were not eligible for reenlistment due to unsatisfactory performance. After completion of your active duty obligation, you were released from active duty, on 16 August 1990, with a General (GEN) characterization of service and assigned to the Inactive Naval Reserve. Your final performance trait average was 2.975.

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, change to your reentry code, medal for gulf war participation, and correction of your evaluations. You contend that a first class petty officer single handedly ruined your career after ruining his. For purposes of clemency and equity consideration, the Board noted you provided a medical documents but no supporting documentation describing post-service accomplishments or advocacy letters.

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 21 May 2024. The Ph.D. stated in pertinent part:

There is no evidence that he was diagnosed with a mental health during military service, or that he exhibited any psychological symptoms or behavioral changes indicative of a diagnosable mental health condition. Temporally remote to his military service, the VA has granted service connection for PTSD. Unfortunately, available records are not sufficiently detailed to establish clinical symptoms in service or provide a nexus with the circumstances of his separation from 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 from the VA of a diagnosis of PTSD that may be attributed to military service. There is insufficient evidence to attribute the circumstances of his separation to PTSD."

In response to the AO, you provided documentation that supplied additional clarification of the circumstances of your case. After reviewing your rebuttal evidence, the AO remained unchanged.

After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your assigned characterization of service and reentry code remain appropriate. In making this finding, the Board noted that your final trait average at the end of you enlistment was below what was required to be eligible for an Honorable characterization of service. Further, based on your poor performance, the Board found that it was within your commanding officer's discretion not to recommended you for advancement or retention. Additionally, the Board concurred with the AO and determined there is insufficient evidence to attribute the circumstances of your separation to PTSD. As explained in the AO, available records are not sufficiently detailed to establish clinical symptoms in service or provide a nexus with the circumstances of your separation from service. Furthermore, the

Board noted you were discharged before the commencement of Desert Shield/Desert Storm operations and were not eligible for any associated gulf war awards earned by your command as part of their deployment. Finally, the Board determined you did not produce any evidence, other than your personal statement, to substantiate your contention that your performance evaluations were erroneous. Therefore, the Board was not persuaded by your arguments to remove or modify your performance evaluations.

As a result, 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. 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,

7/1/2024

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Executive Director

Signed by: █