



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

█
Docket No. 10807-23
Ref: Signature Date

█
█
█

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 limitations 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 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 this 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)/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). The Board also considered an advisory opinion (AO) from a qualified mental health professional, dated 14 May 2024. Although you were provided an opportunity to comment on the AO, you chose not to do so.

You entered active duty with the Navy on 16 June 1987. On 13 May 1987, you were granted an enlistment waiver due to pre-service marijuana use. On 23 September 1987, you received non-judicial punishment (NJP) for assault. On 3 May 1989, you received NJP for using provoking speech and gestures, and disorderly conduct. On 19 December 1989, you received a psychological evaluation, which noted you were displaying occupational stress, antisocial personality traits, and a history of alcohol abuse. On 2 January 1990, you received NJP for dereliction in the performance of duty, using provoking speeches and gestures, and disrespect to

a superior commissioned officer. On 23 February 1990, you received NJP for drunken and disorderly conduct, impersonating a petty officer, and failure to obey a lawful order. On 16 April 1990, you received NJP for being in an unauthorized absence (UA) status, missing ship's movement, and drunk and reckless driving. On 18 April 1990, you received a medical evaluation, which diagnosed you with alcohol abuse and a personality disorder. The medical officer found you fit for duty and recommended you for Level II alcohol treatment at the Counseling and Assistance Center (CAAC). On 9 June 1990, you received an additional NJP for being UA for three hours. Consequently, you were notified of pending administrative separation action by reason of misconduct due to a pattern of misconduct, commission of a serious offense, and drug abuse. You elected to consult with legal counsel and requested an administrative discharge board (ADB). The ADB found that you committed misconduct due to a pattern of misconduct and recommended you receive a General (Under Honorable Conditions) (GEN) discharge. The separation authority (SA) concurred with the ADB and directed a GEN characterization of service by reason of a pattern of misconduct. On 27 December 1990, you were so discharged.

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 and contentions that you incurred PTSD during military service due to serving two tours in the ██████████ onboard a minesweeper and witnessing terrible things. You further contend that you asked for help, and none was provided and you received a Navy Achievement Medal for your outstanding work. For purposes of clemency and equity consideration, the Board noted you did not provide supporting documentation describing post-service accomplishments or advocacy letters.

As part of the Board's review, a qualified mental health professional reviewed your request and provided the Board with an AO on 14 May 2024. The mental health professional stated in pertinent part:

Petitioner was appropriately referred for psychological evaluation and properly evaluated during his enlistment. His personality and alcohol use 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 by the mental health clinicians. He has submitted no medical evidence to support his claims. His misconduct appears consistent with problematic alcohol use and characterological features, rather than evidence of PTSD. 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 insufficient evidence of a diagnosis of PTSD that may be attributed to military service. There is insufficient evidence to attribute his misconduct to PTSD."

After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined your misconduct, as evidenced by your

NJPs, outweighed the potential mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the likely negative impact your conduct had on the good order and discipline of your command. The Board found that your conduct showed a complete disregard for military authority and regulations. The Board also concurred with AO that there is insufficient evidence to attribute your misconduct to PTSD or a mental health condition. As pointed out in the AO, you were appropriately referred for psychological evaluation and properly evaluated during your enlistment. The Board also noted that you provided no additional medical evidence to support your claims. Further, the Board noted that there is no evidence in your record, and you submitted none, to support your contentions. Finally, the Board noted you were given multiple opportunities to correct your conduct deficiencies and chose to continue to commit misconduct. Ultimately, the Board determined you were fortunate to receive a GEN characterization of service based on 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. 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,

7/30/2024

