



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

█
Docket No. 359-24
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 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 19 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) (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). Additionally, the Board also considered an advisory opinion (AO) furnished by qualified mental health provider. Although you were provided an opportunity to respond to the AO, you chose not to do so.

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 originally enlisted in the U.S. Navy and began a period of active duty service on 19 October 1981. Your pre-enlistment physical examination, on 5 June 1981, and self-reported medical

history both noted no psychiatric or neurologic conditions or symptoms. You disclosed pre-service arrests for trespassing and marijuana possession on your enlistment application. On 13 February 1982, you reported for duty on board the ██████████ (██████████) in ██████████, ██████████.

On 30 June 1983, you received non-judicial punishment (NJP) for insubordinate conduct. You did not appeal your NJP. On 12 October 1983, you received NJP for: (a) unauthorized absence (UA), (b) drunken/reckless operation of a vehicle, and (c) disobeying a lawful order. You did not appeal your NJP. On the same day, your command issued you a "Page 13" retention warning (Page 13) documenting your NJP. The Page 13 advised you that any further deficiencies in your performance and/or conduct may result in disciplinary action in addition to processing for an administrative discharge.

On 25 November 1983, you received NJP for UA. You did not appeal your NJP. On 3 February 1984, you received NJP for larceny. You did not appeal your NJP. On 8 February 1984 your command issued you a Page 13 documenting your UA and disobedience of orders. The Page 13 advised you that any further deficiencies in your performance and/or conduct may result in disciplinary action and in processing for administrative separation.

However, on 31 October 1984, you again received NJP for UA. You did not appeal your NJP. On 1 February 1985, you received NJP for UA. You did not appeal your NJP. On 22 April 1985, you received NJP for failing to obey a lawful order. You did not appeal your NJP.

Consequently, your command notified you that you were being processed for an administrative discharge by reason of misconduct due to a pattern of misconduct. You waived your rights to consult with counsel, include written statements, and to request an administrative separation board. In the interim, your separation physical medical history, dated 29 May 1985, noted no psychiatric or neurologic issues. On 3 June 1985, you received NJP for yet another UA. You did not appeal your NJP. Ultimately, on 18 June 1985, you were discharged from the Navy for misconduct with an under Other Than Honorable conditions (OTH) characterization of service and were assigned an RE-4 reentry code.

Post-discharge, you applied to this Board in 2018. The Board denied your original petition for discharge upgrade relief.

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: (a) you are requesting a discharge upgrade due to bullying, a family death, and alcoholism due to stress and nightmares suffered from not wanting to participate in the crossing the equator celebration, (b) you had a blanket thrown over you and were assaulted, and you asked for help and were denied several times, and (c) you did not know how to apply and had mental health issues stemming from these issues that led to many incarcerations. 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 29 May 2024. The Ph.D. stated in pertinent part:

There is no evidence that he was diagnosed with a mental health condition in 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, he has received treatment for mental health concerns that appear unrelated to his service. Unfortunately, available records are not sufficiently detailed to establish clinical symptoms in service or provide a nexus with his misconduct, particularly given pre-service behavior and the chronic nature of his in-service misconduct. 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 insufficient evidence of a mental health condition that may be attributed to military service. There is insufficient evidence to attribute his misconduct to a mental health condition."

After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. In accordance with the Hagel, Kurta, and Wilkie Memos, the Board gave liberal and special consideration to your record of service and your contentions about any traumatic or stressful events you experienced and their possible adverse impact on your service. However, the Board concluded that there was no convincing evidence of any nexus between any mental health conditions and/or related symptoms and your misconduct, and determined that there was insufficient evidence to support the argument that any such mental health conditions mitigated the misconduct that formed the basis of your discharge. As a result, the Board concluded that your misconduct was not due to mental health-related conditions or symptoms. Moreover, even if the Board assumed that your misconduct was somehow attributable to any mental health conditions, the Board unequivocally concluded that the severity of your cumulative misconduct far outweighed any and all mitigation offered by such mental health conditions. The Board determined the record reflected that your misconduct was intentional and willful and demonstrated you were unfit for further service. The Board also determined that the evidence of record did not demonstrate that you were not mentally responsible for your conduct or that you should not be held accountable for your actions.

The Board did not believe that your record was otherwise so meritorious as to deserve a discharge upgrade. The Board concluded that significant negative aspects of your conduct and/or performance greatly outweighed any positive aspects of your military record. The Board determined that characterization under OTH conditions is appropriate when the basis for separation is the commission of an act or acts constituting a significant departure from the conduct expected of a Sailor.

As a result, the Board determined that there was no impropriety or inequity in your discharge and Board concluded that your misconduct and disregard for good order in discipline clearly merited your discharge. While the Board carefully considered the evidence you submitted in mitigation

and commends you on your rehabilitation, 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,

7/24/2024

█