



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. 612-24
Ref: Signature Date

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Dear Petitioner:

This is in reference to your application for correction of your 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.

Because your application was submitted with new evidence not previously considered, the Board found it in the interest of justice to review your application. A three-member panel of the Board, sitting in executive session on 19 July 2024, has carefully examined your current request. 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 25 August 2017 guidance from the Office of the Under Secretary of Defense for Personnel and Readiness (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). The Board also considered the advisory opinion (AO) of a qualified mental health provider. Although you were afforded an opportunity to submit a rebuttal, you 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 case based on evidence of record.

You previously applied to this Board for a discharge upgrade and were denied. The facts of your case remain substantially unchanged.

Your previous application to the Board was considered on 23 October 2023, wherein you contended that the negative impact of your Other Than Honorable discharge was unjust due to the limiting effect it had on your opportunities as well as unfairly stigmatizing you in contrast to your post-discharge character. As part of your application, you submitted evidence of clemency for consideration. You also asserted that your personal hardships at the time of your misconduct, to include child custody issues and a contentious divorce, contributed to the issues which resulted in your discharge. However, the Board declined to summarily upgrade your discharge solely for the purpose of obtaining veterans' benefits or for enhancing education or employment opportunities. Additionally, the Board found your evidence of post-service accomplishments commendable but insufficient to warrant the requested grant of relief on the basis of clemency or equity. You did not, at that time, submit any mental health contentions or evidence for consideration.

In addition, you previously submitted an application for review by the Naval Discharge Review Board (NDRB) and were denied relief on 10 August 2000. You did not submit clemency evidence for consideration at that time but contended that: you had submitted a request mast which was held in abeyance until after your NJP, you were punished twice for the same offense, you were retaliated against for initiating formal grievance procedures, and your lawyer was transferred immediately after your ADSEP board concluded. NDRB found insufficient evidence to support your contentions and no other evidence of irregularity or injustice in your NJPs or ADSEP proceedings.

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, desire to upgrade your discharge and your new contentions that you were suffering from a combination of undiagnosed post-traumatic stress disorder (PTSD) and Adjustment Disorder (AD) during your military service which you believe resulted in your misconduct. You believe that your mental health issues render your discharge to have been "misjudged" as Other Than Honorable and state that this change is "not only vital for a truthful portrayal of [your] commitment but also for enabling advancement of [your] post-military career." Specifically, with respect to your mental health conditions, you assert that, during your first enlistment "a car bomb exploded in ██████████, ██████████. It was an ordinary day that turned into a nightmare. As I gazed upon the aftermath, the sight of the burnt-out building and the charred remains of the car etched itself in my memory. Around me, the world seemed to echo with the silence of devastation, the air heavy with the scent of smoke and loss. In that moment, amidst the rubble and ashes, a part of me was forever altered by the start reality of destruction. Minutes before, I had been at the USO. Laughing. Chatting. Unaware. Fifteen minutes later, the world exploded. The sailor I had just joked with was gone, claimed by the flames and smoke. I remember standing there, amidst the screaming sirens, my heart pounding in my ears, wondering, "Why him? Why not me."

Because you contend PTSD or another mental health condition affected the circumstances of the misconduct which resulted in your discharge, the Board also considered the AO. The AO 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 not met criteria for PTSD but has received some treatment for a mental health condition that is attributed to military service (Adjustment Disorder). Unfortunately, the Petitioner's personal statement and available records are not sufficiently detailed to provide a nexus with his misconduct, given the chronic and repetitive nature of his misconduct and that financial mismanagement is not a typical mental health symptom. 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 some post-service evidence of a mental health condition that may be attributed to military service. There is insufficient evidence of a diagnosis of PTSD. 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 NJP, 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. Additionally, the Board concurred with the clinical opinion that there is insufficient evidence of a diagnosis of PTSD and insufficient evidence to attribute your misconduct to PTSD or another mental health condition. As explained in the AO, "financial mismanagement is not a typical mental health symptom." More significantly, the Board based its denial of relief upon lack of candor. Specifically, you claim to have been physically present in ██████████ during an incident which occurred in April of 1988, when your official military personnel file (OMPF) records, in conjunction with the operational deployment history of the ██████████, clearly establish that you and your ship were in ██████████ from March 1988 until at least 20 May 1988. In addition, the Board found significant inconsistencies with your narrative of the event from the official version. Finally, you submitted no evidence, other than your statement, to substantiate your claim. Therefore, the Board had substantial reason to doubt the credibility of your claim of having been physically present in Naples in April 1988 and whether this event forms the basis for your PTSD or another mental health condition.

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

In its review of your record, the Board noted that your final discharge document appears to have omitted remarks in reference to your continuous period of Honorable service during your second period of enlistment. Should you choose to pursue this correction, you may submit a request to Commander, Naval Personnel Command (PERS 312D1), at: 5720 Integrity Drive, Millington, TN 38055-3120.

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,

8/8/2024

