



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. 858-24
Ref: Signature Date

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Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to 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 your application was not filed in a timely manner, the Board found it in the interest of justice to waive the statute of limitations and consider your application on its merits. A three-member panel of the Board, sitting in executive session, considered your reconsideration application on 17 May 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, and applicable statutes, regulations, and policies, to include 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 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 and began a period of active duty service on 28 January 1970. Your pre-enlistment physical examination, on 25 August 1969, and self-reported medical history both noted no psychiatric or neurologic issues or symptoms. On 21 May 1970, you reported for duty on board the █ in █

On 5 July 1971, you commenced a period of unauthorized absence (UA). While in a UA status

you missed the movement of your ship. Your UA terminated on 20 July 1971. On 24 September 1971, your reassignment request was disapproved by the Humanitarian Assignments Review Board.

On 4 October 1971, you commenced a period of UA. On 3 November 1971 your command declared you to be a deserter. Your UA terminated on 2 December 1971.

On 7 January 1972, you were convicted at a Special Court-Martial (SPCM) of your 59-day UA. You were sentenced to confinement at hard labor for twenty-one (21) days, and a reduction in rank to Seaman Apprentice (E-2). On 4 February 1972, the Convening Authority approved the SPCM sentence.

On 9 March 1972, you commenced another UA. Your UA terminated on 13 March 1972. On 28 March 1972, you received non-judicial punishment (NJP) for your 4-day UA. You did not appeal your NJP. On 29 March 1972, you underwent a psychiatric evaluation. The Navy Medical Officer (MO) determined that you did not demonstrate any evidence of a thought disorder, and there was no evidence of a psychosis or neurosis. The MO diagnosed you with an immature personality that existed prior to entry into the service. The MO noted that the presence of a personality disorder in an individual by itself is not an indication for an administrative discharge.

On 2 April 1972, you commenced another UA. On 12 April 1972, your command declared you to be a deserter and dropped you from the rolls. Your UA terminated on 15 August 1972.

Following your return to military authorities, you subsequently submitted a voluntary written request for an undesirable administrative discharge for the good of the service under Other Than Honorable conditions (OTH) to escape court-martial for your long-term UA (135 days). As a result of this course of action, you were spared the stigma of a court-martial conviction for your multiple UAs, as well as the potential sentence of confinement and the negative ramifications of likely receiving a punitive discharge from a military judge.

On 18 September 1972, your separation physical examination and self-reported medical history both noted no psychological or neurological abnormalities, issues, symptoms, history, or counseling. On 28 September 1972, the Separation Authority approved your voluntary discharge request for an undesirable discharge for the good of the service in lieu of trial by court-martial. Ultimately, on 2 October 1972, you were separated from the Navy in lieu of a trial by court-martial with an OTH discharge characterization and were assigned an RE-4 reenry code.

On 26 May 2004, this Board denied your first discharge upgrade request.

The Board carefully considered all potentially mitigating factors to determine whether the interests of justice warrant relief in your case in accordance with the Wilkie Memo. These included, but were not limited to, your desire for a discharge upgrade and change to your narrative reason for separation. You contend that: (a) your discharge was unfair at the time and remains so now, (b) you believe your discharge was both in error procedurally and in equity, (c) you request liberal consideration, (d) the discharge was both procedurally and substantively

defective, and (e) clemency was never shown to you. The Board noted you checked the “PTSD” and “Other Mental Health” boxes on your application but chose not to provide any supporting evidence of your claim. For purposes of clemency and equity consideration, the Board considered the entirety of the evidence you provided in support of your application.

After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. The Board did not believe that your record of service 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 generally warranted for misconduct and 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. The simple fact remains is that you left the Navy while you were still contractually obligated to serve and you went into a UA status without any legal justification or excuse during a time of war on no less than four (4) separate occasions totaling approximately 213 days. Moreover, the Board noted that the evidence of record did not demonstrate that you were not mentally responsible for your conduct or that you should not otherwise be held accountable for your actions.

The Board observed that character of military service is based, in part, on conduct and overall trait averages which are computed from marks assigned during periodic evaluations. Your overall active duty trait average calculated from your available performance evaluations during your enlistment was approximately 2.45 in conduct. Navy regulations in place at the time of your discharge recommended a minimum trait average of 3.0 in conduct (proper military behavior), for a fully honorable characterization of service. The Board concluded that your conduct marks during your active duty career were a direct result of your pattern of serious misconduct which further justified your OTH discharge characterization.

The Board noted that personality disorders are characterized by a longstanding pattern of unhealthy behaviors, dysfunctional relationships, and maladaptive thinking patterns. They are not conditions considered unfitting or disabling, but render service members unsuitable for military service and consideration for administrative separation. Accordingly, the Board concluded that your personality disorder was a non-disabling disorder of character and behavior, and that it should not be considered a mitigating factor in your misconduct because it did not impair your ability to be accountable for your actions or behaviors. The Board also determined the record clearly reflected that your misconduct was intentional and demonstrated you were unfit for further service.

As a result, the Board determined that there was no impropriety or inequity in your discharge and 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, 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,

5/24/2024

