



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. 1091-24
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 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 12 August 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). The Board also considered the advisory opinion (AO) furnished by a qualified mental health professional. 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 enlisted in the Navy and commenced active duty on 29 January 1974. On 19 June 1974, you received a waiver for prior to service use of marijuana, hashish, LSD, and heroin. On

27 June 1974, you received non-judicial punishment (NJP) for unauthorized absence (UA).

On 18 September 1974, you were convicted at Summary Court-Martial of four occurrences of UA and sentenced to confinement at hard labor for 25 days and forfeiture of \$150 pay per month for one month.

After your release from confinement, on 29 October 1974, you again commenced UA, ended by your surrender on 20 November 1974. You received NJP for this period of UA and were placed on restriction. However, you went UA from restriction on 3 December 1974. During this UA you missed ship's movement and were declared a deserter on 2 January 1975. Ultimately, you were apprehended by the FBI on 27 August 1975.

Subsequently, you requested an Other than Honorable (OTH) discharge in lieu of trial by court-martial. Your commanding officer favorably endorsed your request, and, on 17 October 1975, you were so discharged.

Post-discharge, you applied to the Naval Discharge Review Board (NDRB) for a discharge upgrade. The NDRB denied your request for an upgrade, on 17 October 1979, based on their determination that your discharge was proper as issued.

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 characterization of service and your contentions that the underlying basis of your separation was procedurally defective at the time of discharge, adverse action was unfair at the time, the discharge is now inequitable, and clemency was never shown. For purposes of clemency and equity consideration, the Board considered the evidence you provided in support of your application including your counsel's legal brief and various service record documents.

Based on your assertion that you suffered from a mental health condition while on active duty, a qualified mental health professional reviewed your contentions and the available records and issued an AO dated 11 June 2024. The AO noted in pertinent part:

Petitioner was appropriately referred for psychological evaluation and properly evaluated during his enlistment. His personality disorder and substance use disorder diagnoses were based on observed behaviors and performance during his period of service, the information he chose to disclose, and the psychological evaluation performed by the mental health clinician. Although the personality disorder diagnosis he received in service is no longer in use in current clinical standards, at the time of his service, he reported and demonstrated behaviors indicative of lifelong characterological traits unsuitable for military service. Unfortunately, he has provided no medical evidence to support his claims of PTSD or another mental health condition. 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 or another mental health condition, other than personality disorder. There is insufficient evidence to attribute his misconduct to PTSD or another mental health condition, other than personality disorder.”

After thorough review, the Board concluded your potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your SCM and two NJPs, outweighed these mitigating factors. In making this finding, the Board considered the likely negative impact your frequent absences and repeated misconduct had on the good order and discipline of your command, and that you were given opportunities to address your conduct issues but continued to commit misconduct. The Board also found that your conduct showed a complete disregard for military authority and regulations. Additionally, the Board concurred with the AO and determined that there is insufficient evidence of a diagnosis of PTSD or another mental health condition that may be attributed to military service, and there is insufficient evidence to attribute your misconduct to PTSD or another mental health condition, other than personality disorder. As the AO noted, you were appropriately referred for psychological evaluation and properly evaluated during your enlistment. Your personality disorder and substance use disorder diagnoses were based on observed behaviors and performance during your period of service, the information you chose to disclose, and the psychological evaluation performed by the mental health clinician. The Board further agreed that you provided no medical evidence to support your claims of PTSD or another mental health condition. Finally, the Board observed that you provided no evidence, other than your statement, to substantiate any of your contentions.

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.

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,

8/27/2024

