



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. 1413-24
8002-22
1891-19
9182-15
3152-14

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 16 August 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 and your response to the AO.

You have previously applied to the Board on four occasions. The summary of your service beginning on 2 January 1990 and ending with your Other Than Honorable (OTH) discharge for

commission of a serious offense on 23 October 1992 remains substantially unchanged from that addressed in the previous responses to your multiple requests for review.

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 change your narrative reason for separation to “Secretarial Authority.” You contend that you suffered a material injustice because a discretionary error was made by the Navy by discharging you with an OTH characterization of service despite the existence of various mental health conditions. You submitted an October 2019 Disability Benefits Questionnaire in which you elaborated on your operational service as a Navy air traffic controller during the Persian Gulf War regarding your claims of exposure to situations involving actual or threatened death. Specifically, and as noted by the AO, the DBQ notes that you:

“reported working as an air traffic controller alone when two planes were said to have collided. He was asked to find them on radar and could not...During a training exercise, a pilot clipped his wing while approaching his ship and crashed. He stated ‘they brought him [pilot] back in a shoebox...A pilot had been shot down and he and others were speaking to him via radio trying to guide him to a safe exit when he heard the pilot’s captors shoot him in the head.”

You point out that your patient treatment notes document increased alcohol use during your service after your deployment and purported exposure experiences and that your current treatment includes the use of medical marijuana to alleviate your symptoms of PTSD. Additionally, given your post-discharge rehabilitation and sobriety, you further assert that you have remained misconduct-free in the civilian sector and have provided a state law enforcement background check in support of your previous clemency contentions. You maintain that you have continued receiving treatment from the Department of Veterans Affairs (VA) in the time since your last request for reconsideration.

Because you maintain that PTSD or another mental health condition contributed to the misconduct which resulted in your discharge, the Board considered the AO, which reviewed all current and previous submissions with respect to your contended mental health concerns. After a review and summary report of all medical documentation which you have currently and previously submitted, the AO stated in pertinent part:

During military service, the Petitioner was repeatedly evaluated and diagnosed with Alcohol Use Disorder. Temporally remote to his military service, a VA-affiliated psychologist has diagnosed him with PTSD attributed to military service, and a civilian psychologist has provided treatment for PTSD and Specific Phobia. Unfortunately, available records are not sufficiently detailed to attribute his misconduct to a mental health condition other than alcohol use disorder, given his report during repeated evaluations during service and problematic alcohol behavior prior to entry into service. More weight has been placed upon his pre-service history

and in-service statements regarding his misconduct over post-service descriptions of symptoms of other mental health concerns.

The AO concluded, “it is my clinical opinion there is post-service evidence of a diagnosis of PTSD that may be attributed to military service. There is insufficient evidence to attribute his misconduct to PTSD or another mental health condition, other than alcohol use disorder.”

After considering your rebuttal evidence, the AO remained unchanged.

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 NJPs, civilian conviction, and alcohol rehabilitation failure, 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. Further, the Board concurred with the AO that there is insufficient evidence to attribute your misconduct to PTSD or another mental health condition, other than alcohol use disorder. The Board specifically concurred with the assignment of more weight being placed on your pre-service history of problematic alcohol use, beginning as early as age 16, and your in-service statements regarding your misconduct rather than temporally remote, post-service descriptions of various symptoms for various mental health concerns which you have provided in pursuit of your VA disability claims. Notwithstanding the clinical opinion that “there is post-service evidence of a diagnosis of PTSD that may be attributed to military service,” the Board ultimately concurred with the assessment regarding the lack of nexus between this PTSD and your alcohol abuse and resulting alcohol-related misconduct.

Additionally, although the Board lauds the efforts you have made in your post-discharge life in your pursuit of continued sobriety, the record clearly reflects that your command undertook extensive efforts in assisting you in the receipt of diagnostic and rehabilitative treatment during your military service. In spite of these efforts, your continued in-service alcohol abuse and eventual alcohol rehabilitation failure resulted in a total of six NJPs, to include several serious offenses of being incapacitated for duty, and a civil conviction for driving under the influence; which the Board found to be a serious offense in light of the risk it posed to the life and safety of yourself and other people.

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.

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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.

In the absence of sufficient new evidence for reconsideration, the decision of the Board is final, and your only recourse would be to seek relief, at no cost to the Board, from a court of appropriate jurisdiction.

Sincerely,

8/29/2024

