



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

█
Docket No. 1468-24
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 9 September 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). As part of the Board's review, a qualified mental health professional reviewed your request and provided the Board with an advisory opinion (AO). Although you were afforded an opportunity to submit an AO rebuttal, you chose not to do so.

You enlisted in the U.S. Navy and began a period of active duty on 26 May 1981. While at Service School Command, between 28 September 1981 and 8 October 1981, you received two NJPs for failing to obey a lawful order, drunk on duty, and unauthorized absence (UA) from restriction muster. On 17 December 1981, you were convicted by a summary court-martial (SCM) of disrespect towards a commissioned officer, two specifications of disobeying a lawful order, two specifications of disrespect, and two specifications of assaulting two fellow Sailors. You were sentenced to confinement at hard labor for 23 days and forfeiture of \$367.00 pay per

month for one month. Despite these infractions, you were permitted to remain on active duty and were transferred to your next duty station aboard █. On 23 June 1983, you received a third NJP for unauthorized absence from your appointed place of duty, two specifications of disobeying a lawful order, disrespect, resisting arrest, assault, and drunk and disorderly conduct.

In November 1983, a fire broke out in the Machinery Room due to a fuel spill during fuel transfer operations while the █ was deployed, resulting in both fatalities and injuries. On 18 June 1984, you received a fourth NJP for sleeping on watch. On 1 February 1985, you received a fifth NJP for a three-day unauthorized absence. Consequently, you were notified that you were being recommended for administrative discharge from the Navy by reason of misconduct due to pattern of misconduct (POM). You waived your right to consult with counsel and to present your case to an administrative discharge board. The commanding officer forwarded your administrative separation package to the separation authority (SA) recommending your discharge from the Navy with an Other Than Honorable (OTH) characterization of service. The SA directed your OTH discharge from the Navy by reason of POM and, 19 May 1985, you were so discharged.

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 have your discharge upgraded and your contentions that: (1) you suffered from undiagnosed PTSD due to the fire aboard █ where six of your shipmates lost their lives, (2) you were also knocked unconscious after colliding with a structure while running to fight the fire, (3) your disciplinary issues can be attributed to your youth, (4) following the fire, you were unable to perform your duties due to overwhelming fear, and (5) you were treated by the Department of Veterans Affairs and pushed out instead of being assisted. For the purposes of clemency and equity consideration, the Board considered the evidence you provided in support of your application.

As part of the Board's review, a qualified mental health professional reviewed your contentions and the available records and provided the Board with an AO on 9 July 2024. The AO stated in pertinent part:

There is no evidence that he was diagnosed with a mental health condition in military service, of that he exhibited any psychological symptoms or behavioral changes indicative of a diagnosable mental health condition. He has provided no medical evidence to support his claims. Unfortunately, available records are not sufficiently detailed to establish clinical symptoms in service or provide a nexus with his misconduct, particularly given misconduct that occurred prior to the purported trauma. Additional records (e.g., post-service mental health records describing the Petitioner's diagnosis, symptoms, and their specific link to his misconduct) would aid in rendering an alternate opinion.

The AO concluded, "it is my clinical opinion there is insufficient evidence of a diagnosis of PTSD that may be attributed to military service. There is insufficient evidence to attribute his misconduct to PTSD."

After a thorough review, the Board concluded your potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by NJPs and SCM conviction, 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 determined that an Honorable discharge was appropriate only if the member's service was otherwise so meritorious that any other characterization of service would be clearly inappropriate. Finally, the Board concurred with the AO that there is insufficient evidence of a diagnosis of PTSD that could be attributed to military service or your misconduct. As explained in the AO, you provided no evidence in support of your claims. Finally, the Board observed that you committed a majority of your misconduct prior to the purported traumatic incident that you believe should mitigate your actions. Therefore, the Board 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.

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,

10/2/2024

