



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. 2478-24
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 23 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). 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.

You enlisted in the Navy and, after disclosing pre-service marijuana use and receiving a waiver for a non-minor misdemeanor (forgery), commenced active duty on 6 November 1996.

On 28 August 1998, you received non-judicial punishment (NJP) for failure to obey a lawful order, failure to pay just debts, uttering a check with insufficient funds, and drunkenness causing incapacitation for duty. On 13 January 1999, you completed a full-time substance abuse/dependence program. On 1 July 1999, you were advanced to E-5, second class petty officer. You completed a period of Honorable service and immediately reenlisted on 12 August 1999.

On 30 July 2002, you pleaded nolo contendere to the felony charge of lewd and lascivious acts in the presence of a child under the age of sixteen. You were sentenced to five years of supervised probation, sixty days of confinement, court costs, and victim restitution for counseling or medical costs.

Consequently, on 4 September 2002, you were notified of pending administrative separation processing with an Under Other Than Honorable conditions (OTH) discharge by reason of misconduct due to civil conviction. You waived your rights to consult counsel, submit a statement, or have your case heard by an administrative discharge board (ADB). The Separation Authority directed your discharge with an OTH characterization of service and you were so discharged on 20 September 2002.

Post-discharge, you applied to the Naval Discharge Review Board (NDRB) for a discharge upgrade. The NDRB denied your request for an upgrade, on 14 February 2005, based on their determination that your discharge was proper as issued.

You previously applied to this Board for an upgrade to your characterization of service where you contended that your discharge was unjust because you were arrested by civilian authorities for sexual relations with a fourteen year old girl and you did not know her age, that you received probation and had to register as a sex-offender, that you are technically not a felon but the military counted it as a conviction, that you pled No Contest because otherwise you would have gotten much worse, and that you are not asking to be found innocent and realize you are partly guilty but the punishment did not fit the crime and you were made the scapegoat. The Board denied your request on 28 October 2019.

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 change your discharge characterization of service and your contentions that you were suffering from undiagnosed PTSD from childhood trauma that caused erratic behavior, risk taking, and severe impairment to judgement. For purposes of clemency and equity consideration, the Board noted you did not provide supporting documentation describing post-service accomplishments or advocacy letters.

As part of the Board's review process, a qualified mental health professional reviewed your contentions and the available records and issued an AO dated 29 July 2024. The AO stated in pertinent part:

Petitioner contends he incurred Post Traumatic Stress Disorder (PTSD) from childhood trauma, which may have contributed to the circumstances of his separation.

Petitioner entered active duty in the US Navy in November 1996, acknowledging one-time pre-service marijuana use and "family counseling at age 14 when sister was in trouble."

In August 2001, he was arrested by civilian authorities and charged with lewd and lascivious acts in the presence of a child under 16 years of age. In July 2002, he pled no contest to the charges and received his sentence.

In September 2002, he was discharged under other than honorable conditions. In previous requests for review, he has claimed he was unaware of the age of the child.

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. Throughout his disciplinary processing, there were no concerns raised of a mental health condition that would have warranted a referral for evaluation. He has provided no medical evidence in support of his claims. Unfortunately, his personal statement is not sufficiently detailed to establish clinical symptoms in service or provide a nexus with his misconduct, particularly given statements that he was unaware of the misconduct.

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 or another mental health condition.”

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 civil conviction, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the likely severe impact your conduct had on your victim, the likely negative impact your conduct had on the good order and discipline of your command, and the likely discrediting effect it had on the Navy. Additionally, the Board concurred with the AO and determined that there is insufficient evidence of a diagnosis of PTSD that may be attributed to military service and insufficient evidence to attribute your misconduct to PTSD or another mental health condition. As explained in the AO, you provided no medical evidence in support of your claims and your personal statement is not sufficiently detailed to establish clinical symptoms in service or provide a nexus with your misconduct, particularly given your contention that you were unaware of the misconduct. Finally, the Board noted you provided no evidence to substantiate 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. 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. 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,

10/11/2024

