



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. 3749-24
Ref: Signature Date

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Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to 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.

Although you did not file your application in a timely manner, the Board waived the statute of limitation 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 4 October 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 to 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) of a qualified mental health provider and your response to the AO.

You enlisted in the Navy and began a period of active duty on 8 December 1978. During your initial occupational training, you were dropped from school in May 1979 for having a negative attitude. You served with your squadron for approximately a year and a half until an incident resulted in your nonjudicial punishment (NJP), on 19 January 1980, for violations of the Uniform Code of Military Justice (UCMJ) under Articles 92 and 134, for dereliction of duty and threat to government property, respectively. The majority of your punishment, to include reduction in paygrade, was suspended, resulting in your being confined to bread and water for three days with \$50 forfeiture of pay for two months. As a result, you also received administrative counseling advising you of derogatory marks due to poor military bearing, disrespect for authority, and causing low morale due to various incidents, to include a notably low mark of 1.0 in military behavior. Following this initial incident, your trait average improved, remaining above 3.0

during both marking periods in 1981. On 29 October 1981, your squadron experienced the fatal crash of an EA-6B Prowler, documentation of which was subsequently confirmed by the Department of Veterans Affairs (VA). You received a second NJP, on 17 December 1982, for another Article 92 violation, again for dereliction of duty, which resulted in your reduction to the paygrade of E-3 in addition to a 15 day period of correctional custody, which was suspended.

Subsequently, you were advised of another derogatory performance evaluation and notified of processing for administrative separation by reason of substandard performance and inability to adapt to military service. You were notified that you would receive a characterization of service based on the type warranted by your service record. You acknowledged this notification, did not object to the separation, and elected not to make a statement in rebuttal to the proposed discharge, although you did make a statement in rebuttal to your performance evaluation, criticizing the nature and content of the comments as well as the timing of the marking period, stating that the comments were false and did not describe you at all. Your commanding officer provided a response to you rebuttal, affirming that you had completed an academic training program ranked third of six and had received a letter of appreciation during your Mediterranean deployment, but that your performance had declined in the period since the deployment to the point of being "totally unsatisfactory" to include being lackadaisical while assigned to security duty at the crash site of the ██████████. He further elaborated that your attitude and lack of attentiveness in your work center had resulted not only in substandard work but had also resulted in injury to co-workers. At the time of your involuntary administrative discharge on 8 March 1982, although your overall trait average was just above that required to have qualified for an Honorable characterization of service, your final military behavior and conduct average was not greater than the minimum required mark of 3.0. Therefore, your characterization of service was identified as General (Under Honorable Conditions) (GEN).

You previously applied to the Naval Discharge Review Board (NDRB) contending that your adverse evaluations and trait marks, which resulted in your discharge under honorable conditions, were unjust and issued in a prejudicial manner. You also stated that you had been accepted for the Boost program but that no one had recognized or made an effort to resolve your situation. Your request was considered by NDRB, on 3 July 1990, but your discharge was found to be proper as issued with no change warranted.

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 to upgrade your discharge to "Honorable," to change your separation code and reentry code to remove derogatory remarks, to expunge your final performance evaluation, and to reinstate your rank to the paygrade of E-4. You contend that there is a clear evidentiary link between your traumatic stressor during military service, which resulted in undiagnosed post-traumatic stress disorder (PTSD), and the misconduct which resulted in your discharge under honorable conditions. Having acquired over three years of service prior to your discharge, you feel it was unfairly harsh and rapid to have discharged you for substandard performance. For purposes of clemency and equity consideration, you included your Department of Veterans Affairs disability rating decision, which identified the October 1981 incident as your traumatic stressor.

Because you contend that PTSD or another mental health condition affected your conduct, the Board considered the AO. The AO stated in pertinent part:

The Petitioner submitted “PTSD stressor” information that was “verified by CURR,” and VA compensation and pension rating indicating 100% service-connection for PTSD. According to his PTSD stressor information as provided by the VA, it appears as though the traumatic event noted occurred in October 1981. Two of his NJP’s occurred prior to this traumatic event, thus it cannot be said that all of his misconduct was a result of PTSD symptoms.

The AO concluded, “it is my considered clinical opinion there is sufficient evidence of a post-service mental health condition that may be attributed to military service. There is insufficient evidence that all of his misconduct could be attributed to a mental health condition.”

After reviewing 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, 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. With respect to your characterization of service under honorable conditions being type warranted by service, the Board found that the marks you received for your military bearing and conduct were neither unjust nor disproportionate, to include the mark of 1.0 incident to the serious events surrounding your first NJP. Further, given the comments provided by your commanding officer in rebuttal to your statement regarding your performance evaluation and marks, the Board noted that he identified at least one additional incident of misconduct serious enough to have resulted in injury to your co-workers. To the extent that your behavior may have been adversely affected by the occurrence of the Prowler crash, the Board determined that you already received substantial leniency by way of your commanding officer’s decision to process you for administrative separation under a basis for which the least favorable characterization was type warranted by service record, rather than a misconduct basis for which you could have potentially received an Other Than Honorable characterization of service. Finally, the Board found no basis to remove the derogatory materials in your record, reinstate your paygrade to E-4, or change the basis for your separation. The Board found that your NJPs and overall poor performance support the basis for your separation, your reduction in paygrade, and the adverse performance evaluations in your record.

As a result, the Board concluded significant negative aspects of your service outweigh the positive aspects and continues to warrant a GEN 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 the 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 is attached 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,

10/29/2024

