



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. 4072-24
Ref: Signature Date

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Dear Petitioner:

This is in reference to your reconsideration request 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.

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 31 October 2024, has carefully examined your current request. The names and votes of the members of the panel 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, applicable statutes, regulations, and policies to include 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)/mental health condition (MHC) (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).

You previously applied to this Board for a discharge upgrade and were denied on 11 March 2019. The facts of your case remains substantially unchanged.

As part of the Board's review of your previous application, it considered an advisory opinion (AO) from a qualified mental health professional, dated 15 October 2018. The AO stated in pertinent part:

The records available for review cite Petitioner's experience of childhood sexual trauma, including molestation at age 8, as the traumatic event. There is no evidence

in the Petitioner's record that he experienced a motor vehicle accident during his military service.

The AO concluded, "the Petitioner's diagnosed mental health issues cannot be attributed to military service. The Petitioner's NJP for theft and his civilian criminal arrest can not be attributed to PTSD...there is insufficient evidence that the Petitioner's misconduct that resulted in his second NJP can be attributed to a mental health condition."

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 for a discharge upgrade and disability discharge based on injuries received in an automobile accident while on active duty. To support your contentions you included medical records from August 2000, stating that you were in an automobile accident on 6 August 2000 and that you were experiencing pain in the shoulder. You also included a 5 April 2000 medical records stating that you were experiencing pain in your foot. For purposes of clemency and equity consideration, the Board noted you did not provide documentation describing post-service accomplishments or advocacy letters.

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 non-judicial punishments and civilian 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. In addition, the Board considered the likely discrediting effect your civilian misconduct had on the Navy. Further, the Board concurred with the AO that there is insufficient evidence to attribute your misconduct to a mental health condition. The Board concluded the types of offenses¹ were committed were not a typical symptom of a mental health condition. 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.

Regarding your request for a disability discharge, the Board disagreed with your rationale for relief. In reaching its decision, the Board noted you provided limited medical information. Upon review of the documentation provided, the Board noted your shoulder and feet conditions were recorded two years prior to your discharge, did not place you in a limited duty status, and were not referred to a medical evaluation board (MEB). Moreover, even if those injuries did warrant referral to a MEB, the Board determined you were ineligible for disability processing since service regulations directed misconduct processing to supersede disability processing.

Therefore, 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

¹ Your first non-judicial punishment was for larceny of cologne and your civilian misconduct involved burglary.

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,

11/24/2024

