



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

██████████
Docket No. 4718-24
Ref: Signature Date

██████████
██████████
██████████

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 24 May 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) provided by a qualified mental health professional as part of your last application to this Board. In addition, the Board again considered your response to the AO and the rebuttal to your response.

The Board determined that your personal appearance, with or without counsel, would not materially add to the understanding of the issues involved. Therefore, the Board determined a personal appearance was not necessary and considered your case based on evidence of record.

You previously applied to this Board and were denied relief on 11 February 2022. The facts of your case remain substantially unchanged.

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 characterization of service and your contention that your mental health issues affected your military service. Although you now seek reconsideration of your mental health contentions and prolonged unauthorized absence, you have submitted no new medical evidence for consideration, but resubmitted evidence of your receipt of social security disability benefits with the addition of a statement from yourself regarding your inability to maintain employment and the head injury you purportedly suffered as a result of your car accident. Further, you provided a statement from your mother reiterating your need for benefits due to the financial burden she experiences as a result of you and your mental health issues.

As part of your previous application, an AO was provided and considered by the Board. The AO stated in pertinent part:

Unfortunately, Petitioner did not provide clarifying information about his mental health condition (i.e., diagnosis, symptoms experienced). The OMPF did not contain evidence of a diagnosis of a mental health condition or reported psychological symptoms/behavioral changes indicative of a diagnosable mental health condition. The lack of clarifying information made available did not provide enough markers to establish an onset and development of mental health symptoms or identify a nexus with his misconduct.

The AO concluded, “it is my considered clinical opinion the preponderance of available objective evidence failed to establish Petitioner suffered from a mental health condition at the time of his military service or his in-service misconduct could be mitigated by a mental health condition.”

In response to the AO, you provided rebuttal evidence that supplied clarifying information regarding your case. In response to your evidence, a rebuttal AO was considered. The rebuttal AO stated in pertinent part:

The additional information submitted does provide new information. The personal statement explained Petitioner was in a motor vehicle accident in January or February of 2002 that was caused by the “mental health that I had been suffering from...” and noted he suffered from mental health issues since childhood. The documentation from ██████████ ██████████ Community Services indicated Petitioner’s first psychiatric hospitalization was at the ██████████ in 2010 and he received treatment from ██████████ in 2010. Petitioner was originally diagnosed with Psychotic Disorder, Not Otherwise Specified. A note in January of 2012 indicated “...Malingering seems unlikely but isn’t out of the question and signs of same should be monitored in the future...” Followed by a note in February 2012, “Description of symptoms remains vague but he does report benefitting from the medication...” Petitioner was eventually diagnosed with Schizophrenia, Paranoid Type in May of 2012. The letter, from the Social Security Administration, confirmed he received supplemental security income for an unidentified disability.

There is no indication within the OMPF petitioner disclosed prior mental health symptoms/treatment. For example, his Security Clearance Application was void of any reported mental health treatment within the last seven years. Petitioner did have prior service in the ██████████ (one month in 2001), but no information was available regarding his discharge. In his application to the Navy Discharge Review Board (NDRB), he contended he had been in a car accident, was hospitalized, and subsequently in UA status. The NDRB explained although records confirmed minor injuries from a car accident, there was no indication treatment for the minor injuries caused him to be absent for 549 days. As was the issue in the original AO, there remains a lack of objective evidence Petitioner's misconduct arose from a mental health condition.

The rebuttal AO concluded, "it is my considered clinical opinion even though Petitioner presented evidence of post-discharge diagnosis, the preponderance of available evidence fails to establish his in-service misconduct was mitigated by a mental health condition."

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 extended UA and separation in lieu of trial by court-martial, 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. The Board again concurred with the AO that the preponderance of available evidence fails to establish your in-service misconduct was mitigated by a mental health condition. The Board noted that you served for a minimal period of time with no documented incidents tied to your military service which might have adversely affected your mental health, and you absented yourself for over 18 months without justified excuse, after spending less than two weeks at your first permanent duty station. To the extent that you claim there are justifiable reasons for your absence, whether solely due to your automobile accident or mental health concerns, the Board determined you have not provided evidence to support this contention.

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 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,

6/14/2024

