



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. 4857-24
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.

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 6 November 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 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 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). The Board also considered an advisory opinion (AO) from a qualified mental health professional, dated 27 August 2024. Although you were provided an opportunity to comment on the AO, you chose not to do so.

You previously applied to this Board for a discharge upgrade but were denied on 14 June 1995, 15 April 2015, and 11 December 2015. In addition, your requests for reconsideration were denied without a hearing, on 7 July 2003 and 21 March 2011, based on lack of new evidence. 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 discharge and contentions that you incurred PTSD or a mental health condition following a near-fatal accidental injury while aboard your docked ship. You also contend that you developed an alcohol use disorder in order to cope with the traumatizing experience, but you have been clean and sober for over 34 years and worked as a licensed alcohol and drug counselor for the past 28 years. For 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 request and provided the Board with an AO. The mental health professional stated in pertinent part:

Petitioner was evaluated on two occasions during his military service and did not meet criteria for a mental health condition at either point in time. This absence of diagnosis was based on observed behaviors and performance during his period of service, the information he chose to disclose, and the psychological evaluations performed.

Post-service, he has received treatment from VA clinicians for a diagnosis of PTSD that has been attributed to military service, although there are some inconsistencies regarding the Petitioner's traumatic precipitants, as noted in available records and in his statement. However, service medical records do support the Petitioner's current claim regarding a near-fatal strangulation accident. It is plausible that this event could be a traumatic precipitant. It is possible that further exposure to combat exacerbated symptoms and contributed to additional traumatic precipitants and that all traumatic precipitants were not exhaustively evaluated during his previous treatment periods.

While it is possible that his misconduct could be related to symptoms of avoidance and irritability from undiagnosed symptoms of PTSD, it is difficult to attribute his chronic misconduct solely to symptoms of PTSD or another mental health condition, given his repeated denial of symptoms in service. Additional records (e.g., post-service mental health records describing the Petitioner's diagnosis, symptoms, and their specific link to his misconduct) may aid in rendering an alternate opinion.

The AO concluded, "it is my clinical opinion there is post-service evidence from VA clinicians of a diagnosis of PTSD that may be attributed to military service. There is insufficient evidence to attribute his misconduct solely to PTSD or another mental health condition."

After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined your misconduct, as evidenced by your seven non-judicial punishments and two summary courts martial, outweighed the potential mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and concluded that your conduct showed a complete disregard for military authority

and regulations. Further, the Board observed you were provided the opportunity to correct your conduct deficiencies but chose to continue to commit misconduct; which ultimately led to your discharge. The Board also concurred with the AO that there is insufficient evidence to attribute your misconduct solely to PTSD or another mental health condition. As explained in the AO, while it is possible that your misconduct could be related to symptoms of avoidance and irritability from undiagnosed symptoms of PTSD, it is difficult to attribute your chronic misconduct solely to symptoms of PTSD or another mental health condition, given your repeated denial of symptoms in service. 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 documentation you submitted in mitigation and commends your years of sobriety, 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,

11/26/2024

