



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

██████████
Docket No. 5321-24

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 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 18 November 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 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). As part of the Board's review, a qualified mental health professional reviewed your request and provided the Board with an advisory opinion (AO). Although you were afforded an opportunity to submit a rebuttal, you chose not to do so.

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

You enlisted in the Navy and began a period of service on 20 July 1994. On 29 June 1995, you were discharged with an Honorable characterization of service to enroll in the U.S. Naval

Academy (USNA). On 30 June 1996, you commenced a separate period of service at the USNA as a midshipman. On 10 July 1996, your midshipman appointment was terminated, and you were discharged by reason of unsatisfactory performance with an Honorable characterization of service.

In 2003, you reenlisted in the Navy Reserve. However, you were eventually discharged in September 2004 with a General (Under Honorable Conditions) characterization of service for unsatisfactory participation.

The Board carefully considered all potentially mitigating factors to determine whether the interest 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 the narrative reason for separation on your Certificate of Discharge or Release from Active Duty (DD Form 214) from “unsatisfactory performance” to “satisfactory performance” and your contentions that: (1) you suffered an injury and were denied Americans with Disabilities Act (ADA) accommodations at the U.S. Naval Academy, despite the ADA being a federal law that guarantees such accommodations for all college students, and (2) the absence of these necessary accommodations significantly impacted your ability to maintain a B average, which you would have otherwise been capable of maintaining. For purposes of clemency and equity consideration, the Board considered the evidence you submitted in support of your application.

Based on your assertions that you incurred mental health concerns during military service, which might have mitigated your discharge characterization of service, a qualified mental health professional reviewed your request for correction to your record and provided the Board with an AO on 1 October 2024. The AO stated in pertinent part:

The Petitioner submitted a letter from a psychologist of U.S. Vets Las Vegas indicating that a lack of ADA accommodations resulted in his unsatisfactory performance at the Naval Academy. He also submitted articles on ADA accommodation. There is no evidence that the Petitioner was diagnosed with a mental health condition while in military service, or that he exhibited any symptoms of a mental health condition. Additionally, there is no evidence that he was not provided with ADA accommodations while at the Naval Academy. His statement is not sufficiently detailed to provide a nexus with his misconduct. Additional records (e.g., mental health records describing the Petitioner’s diagnosis, symptoms, and their specific link to his misconduct) would aid in rendering an alternate opinion.

The AO concluded, “based on the available evidence, it is my considered clinical opinion there is insufficient evidence of a mental health condition that may be attributed to military service. There is insufficient evidence that his narrative reason for separation was in error.”

After a thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board found no error or inequity in your assigned narrative reason for separation. The Board relies on presumption of regularity to support the official actions of public officers and, in the absence of substantial evidence to the contrary, will presume that they have properly discharged their official duties. The Board determined the

evidence you provided was insufficient to overcome the presumption that you were properly discharged by the Naval Academy for unsatisfactory performance. Additionally, the Board concurred with the AO that there is insufficient evidence of a diagnosis of a mental health condition that may be attributed to your military service, and insufficient evidence that your narrative reason for separation was in error. As explained in the AO, there is no evidence you were not provided with ADA accommodations while at the Naval Academy.

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. 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,

12/16/2024
