



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

██████████
Docket No. 6077-24

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 8 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) (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). Additionally, the Board also considered an advisory opinion (AO) furnished by qualified mental health provider. Although you were provided an opportunity to respond to the AO, 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 based on the evidence of record.

You previously applied to this Board for a discharge upgrade and were denied on 9 April 2013.

On 31 March 2016, the Board denied your request for reconsideration. On 21 September 2020, this Board denied your second request for reconsideration. The facts of your case remain substantially unchanged.

On 9 May 2024, this Board denied your request to change your Social Security Number (SSN). The Board informed you that you did not exhaust all of your administrative remedies to change your SSN before coming to the Board. The Board directed you to first submit your request to Commander, Navy Personnel Command, PERS-3E for appropriate action.

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 change to your SSN¹. You contend that: (a) on active duty you were suffering from an undiagnosed mental health condition, which was later diagnosed by the Social Security Administration (SSA), (b) unbeknownst to you, you were suffering from PTSD which affected your behavior, (c) you were unaware that you had PTSD, but once diagnosed, you realized that this undiagnosed condition created the circumstances for your premature separation. For purposes of clemency and equity consideration, the Board considered the totality of the evidence you provided in support of your application.

As part of the Board review process, the BCNR Physician Advisor who is a licensed clinical psychologist (Ph.D.), reviewed your contentions and the available records and issued an AO dated 30 September 2024. As part of the Board's review, the Board considered the AO. The AO stated in pertinent part:

Petitioner provided evidence of a diagnosis of PTSD from the Social Security Administration, effective May 2016. In a previous request for review, he provided evidence of civilian treatment for PTSD from 2013 to 2016 addressing "current life stressors, as well as "PTSD triggers from military" and a "history of serious car accidents." The only traumatic incidents in the clinical notes were "trauma of serving on boat, refers to it as a floating penitentiary" and "hazing as enlisted." There were no other details concerns his in-service stressors, traumatic events, or other details of his clinical history.

During military service, the Petitioner was diagnosed with an Alcohol Use Disorder. There is no evidence that he was diagnosed with another mental health condition in military service, or that he exhibited any psychological symptoms or behavioral changes indicative of another diagnosable mental health condition. Temporally remote to his military service, he has received treatment for a diagnosis of PTSD from a civilian provider. Unfortunately, available records are not sufficiently detailed to establish clinical symptoms in service or provide a nexus with his misconduct, particularly given the nature of his misconduct.

¹ The Board found no evidence that you submitted a SSN change request to PERS-3E. Therefore, the Board again determined you have not yet exhausted your administrative remedies and declined to consider this aspect of your application.

The Ph.D. concluded, “it is my clinical opinion that there is post-service evidence from a civilian provider of a diagnosis of PTSD that may be attributed to military service in part. There is insufficient evidence to attribute his misconduct to PTSD.”

After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. In accordance with the Hagel, Kurta, and Wilkie Memos, the Board gave liberal and special consideration to your record of service and your contentions about any traumatic or stressful events you experienced and their possible adverse impact on your service. However, the Board concluded that there was no convincing evidence of any nexus between any purported mental health conditions and/or related symptoms and your misconduct, and determined that there was insufficient evidence to support the argument that any such mental health conditions mitigated the misconduct that formed the basis of your discharge. As a result, the Board concluded that your misconduct was not due to mental health-related conditions or symptoms. Even if the Board assumed that your misconduct was somehow attributable to any mental health conditions, the Board unequivocally concluded that the severity of your cumulative misconduct far outweighed any and all mitigation offered by such mental health conditions. The Board determined the record reflected that your misconduct was intentional, willful, and persistent, and demonstrated you were unfit for further service. The Board also 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.

The Board observed that character of military service is based, in part, on conduct and overall trait averages which are computed from marks assigned during periodic evaluations. Your overall active duty trait average calculated from your available performance evaluations during your enlistment was approximately 1.87 (out of a possible 4.0) in conduct. Navy regulations in place at the time of your discharge recommended a minimum trait average of 3.0 in conduct (proper military behavior), for a fully honorable characterization of service. The Board concluded that your cumulative misconduct was not minor in nature and that your conduct marks during your active duty career were a direct result of your serious misconduct and a repeated failure to conform to basic military standards of good order and discipline, all of which further justified your OTH characterization.

The Board did not believe that your record was otherwise so meritorious as to deserve a discharge upgrade. The Board concluded that significant negative aspects of your conduct and/or performance greatly outweighed any positive aspects of your military record. The Board determined that characterization under OTH conditions is appropriate when the basis for separation is the commission of an act or acts constituting a significant departure from the conduct expected of a Sailor.

As a result, the Board determined that there was no impropriety or inequity in your discharge and concluded that your misconduct and disregard for good order in discipline clearly merited your discharge. 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.

Regarding your request to change your SSN, the Board directs you to Commander, Navy Personnel Command (PERS-3E), 5720 Integrity Drive, Millington TN 38055-3100. The Board strongly suggests that, as part of your SSN change request to PERS-3E, you first obtain and submit a letter from the Social Security Administration (SSA) indicating what is your correct SSN. Absent such evidence from the SSA, it is unlikely that a record change request would be granted.

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.

In the absence of sufficient new evidence for reconsideration, the decision of the Board is final, and your only recourse would be to seek relief, at no cost to the Board, from a court of appropriate jurisdiction.

Sincerely,

11/24/2024

