



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

██████████
Docket No. 6157-24
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 Board waived the statute of limitation 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 25 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 to 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). The Board also considered the advisory opinion (AO) of a qualified mental health provider, which was previously provided to you. 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 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 enlisted in the Navy and began a period of active duty on 17 August 1990. Following your initial entry, you were issued administrative counseling that you had failed to disclose pre-service involvement with civil authorities or drug use but that you were being retained in spite of your fraudulent enlistment. On 15 August 1991, you were subject to nonjudicial punishment for a violation of the Uniform Code of Military Justice (UCMJ) under Article 107 due to filing a false official travel claim for a value of \$853. On 1 April 1993, you accepted trial by Summary Court-Martial (SCM) for multiple violations of the UCMJ, to include: two specifications under

Article 128 for committing assault upon an E-6 by cutting at his body with a dangerous weapon, a doubled edged knife, and by striking at his body with a dangerous weapon, a linked chain, both of which were a means likely to produce death or grievous bodily harm, one specification under Article 134 for wrongfully communicating a threat to injure an E-5 by saying “you’ll get yours, I’ll be back” or words to that effect, and a second specification under Article 134 for unlawfully carrying on or about your person a concealed weapon, a double edged knife. Although you pleaded not guilty to all charges and specifications, you were found guilty and sentenced to 45 days of restriction and hard labor without confinement in addition to reduction to the paygrade of E-2. Following your SCM, you were notified of processing for administrative separation by reason of misconduct due to the commission of a serious offense and you elected to exercise your right to request a hearing before an administrative discharge board. Your hearing convened on 11 June 1993 and unanimously found that a preponderance of the evidence substantiated the basis of misconduct by commission of a serious offense. The members recommended that you should be separated and that your characterization of service should be under Other Than Honorable (OTH) conditions. In his concurring endorsement of the finding and recommendations of your administrative discharge board, your commanding officer addressed the allegations of error submitted for consideration by your legal counsel. The recommendation for your separation under OTH conditions was approved and you were so discharged on 6 August 1993.

The Board carefully considered all potentially mitigating factors to determine whether the interests of justice warrant relief in your case in accordance with the Wilkie, Kurta, and Hagel Memos. These included, but were not limited to, your desire to upgrade your discharge and your contentions that you were dealing with mental health issues at the time of your discharge, the Navy was ill prepared to identify and treat your condition, your discharge was simply the Navy’s way of washing its hands of your personal struggles, you were able to address and correct your character after receiving the help you needed, you should have received an Honorable discharge, it was excessive to separate you for commissions of a serious offense since you deny having committed assault, and you were forced into accepting an OTH discharge by way of threats of court-martial and a potential punitive discharge. You further note that you were punished as a result of your SCM and, therefore, believe that you should not have been separated. For purposes of clemency and equity consideration, you submitted a personal statement, service records, and an article about military veterans.

Because you contend, in part, that post-traumatic stress disorder (PTSD) or another mental health condition affected the circumstances of the misconduct which result in your discharge, the Board also considered the AO. The licensed clinical psychologist (Ph.D.) stated in pertinent part:

There is no evidence that he was diagnosed with a mental health condition in military service, or that he exhibited any psychological symptoms or behavioral changes indicative of a diagnosable mental health condition. Throughout his disciplinary processing, there were no concerns raised of a mental health condition that would have warranted a referral for evaluation. He has provided no medical evidence in support of his claims. Unfortunately, his personal statement is not sufficiently detailed to establish clinical symptoms in service or provide a nexus with his misconduct.

The Ph.D. concluded, “it is my clinical opinion that there is insufficient evidence of a

diagnosis of PTSD or another mental health condition that may be attributed to military service. There is insufficient evidence to attribute his misconduct 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 that your misconduct, as evidenced by your NJPs, 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. Further, the Board concurred with the clinical opinion that there is insufficient evidence of a diagnosis of PTSD or another mental health condition that may be attributed to military service, and there is insufficient evidence to attribute your misconduct to PTSD or another mental health conditions. With respect to your specific contentions that you did not commit assault and that you were forced into accepting an administrative discharge under OTH conditions due to “threats” of a punitive discharge, the Board found that you voluntarily accepted trial by SCM, which thereby protected you from the potential of a punitive discharge and as much as a year of confinement. The Board noted your SCM found you guilty of the alleged assault offenses and the members of your administrative discharge board likewise found sufficient evidence to substantiate those offenses. The Board found insufficient evidence to the contrary in your application or service record to overcome the presumption of regularity of those findings. Additionally, the Board found no evidence of injustice or error in your commanding officer’s exercise of discretion with respect to processing you for administrative separation following your SCM conviction and sentence, especially in light of the violent nature and seriousness of the offenses which you had committed.

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,

12/30/2024

