



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

██████████
Docket No. 7561-24
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 3 February 2025. 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.

During your enlistment processing you were granted an enlistment waiver for the possession of a deadly weapon. You enlisted in the Navy and began a period of active duty on 5 October 1992. On 4 August 1993, the Bureau of Naval Personnel directed you be counseled for failing to

reported pre-service infractions involving no insurance/license plates, failure to appear, failure to provide proof of insurance, possession of a switchblade, possession of a controlled substance, failure to pay fine, speeding, and two separate instances of driving without a license.

In September 1993, you were formally diagnosed with Stage II germ cell carcinoma of the testis and completed your prescribed chemotherapy on 3 December 1993. On 30 September 1994, you received nonjudicial punishment (NJP) for three specifications of failing to go to your appointed place of duty and two specifications of unauthorized absence (UA). You were also issued administrative remarks documenting your infractions, retaining you in the Naval service, and advising you that subsequent violation(s) of the Uniform Code of Military Justice (UCMJ) or conduct resulting in civilian conviction could result in an administrative separation under other than honorable conditions. On 17 October 1994, you received a second NJP for wrongfully using methamphetamine and using disrespectful language with contempt. A medical evaluation determined you were not dependent upon methamphetamine and recommended you be administratively separated from the Navy. Consequently, you were notified that you were being recommended for administrative discharge from the Navy for the commission of a serious offense and drug abuse; at which time you waived your right to consult with counsel and to present your case to an administrative discharge board. On 8 December 1994, you were discharged with an Other Than Honorable (OTH) characterization of service.

Post-discharge, you applied to the Naval Discharge Review Board (NDRB) for a discharge upgrade. The NDRB denied your request for an upgrade, on 28 January 2010, based on their determination that your discharge was proper as issued.

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 upgrade your discharge and your contentions that: (1) you developed PTSD from cancer caused by radiation exposure at work; which you received following orders to observe other employees measuring radiation levels in a storeroom, (2) as a result, you began self-medicating with drugs and alcohol, (3) post-discharge, you have worked as a mover and often moved military families, and (4) it is time for you to access the benefits you deserve from the military in order to obtain medical assistance and help your family. 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 PTSD and other mental health issues during military service, which may have contributed to the circumstances of your separation from service, a qualified mental health professional reviewed your request for correction to your record and provided the Board with an AO. The AO stated in pertinent part:

There is no evidence that the Petitioner was diagnosed with a mental health condition during his military service, or that he exhibited any psychological symptoms or behavioral changes indicative of a mental health condition. He has provided no medical evidence in support of his claims. Unfortunately, his personal statement is not sufficiently detailed to establish clinical symptoms or provide a nexus with his requested change for narrative reason for separation. Additional records (e.g., active duty medical records, post-service mental health records

describing the Petitioner's diagnosis, symptoms, and their specific link to her separation) would aid in rendering an alternate opinion.

The AO concluded, “it is my clinical opinion that there is insufficient evidence of a mental health condition that may be attributed to military service. There is insufficient evidence to attribute his misconduct to a mental health condition.”

After a thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined your misconduct, as evidenced by your NJPs, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact that it included a drug offense. The Board determined that illegal drug use by a service member is contrary to military core values and policy, renders such members unfit for duty, and poses an unnecessary risk to the safety of their fellow service members. Additionally, the Board concurred with the AO that there is insufficient evidence to attribute your misconduct to a mental health condition. As explained in the AO, you did not provide medical evidence in support of your claims and your personal statement is not sufficiently detailed to establish clinical symptoms or provide a nexus with your request. Finally, absent a material error or injustice, the Board declined to summarily upgrade a discharge solely for the purpose of facilitating veterans' benefits, or enhancing educational or employment opportunities. Therefore, the Board determined that your discharge was proper and equitable under standards of law and discipline and that the discharge accurately reflects your conduct during your period of service.

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,

3/3/2025

the 1990s, the number of people in the United States who are 65 years of age or older is projected to increase from 20 million to 35 million. The number of people 75 years of age or older is projected to increase from 10 million to 17 million. The number of people 85 years of age or older is projected to increase from 2 million to 4 million.