



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. 7576-24
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 contentions not previously considered, the Board found it in the interest of justice to review your application. Your current request has been carefully examined by a three-member panel, sitting in executive session on 28 October 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, 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 the advisory opinion (AO) furnished by a qualified mental health professional and your response to the AO.

You previously applied to this Board for a discharge upgrade and were most recently denied relief on 26 July 2017. 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 change your discharge characterization of service, and your contentions that, throughout your separation process, you were never fully informed of your rights, only spoke with a naval officer who asked if you

wanted to go home, were never fully informed nor was there a requirement to fully inform you of your rights prior to your waiving them and entering into an agreement with the government, and were unaware of the collateral consequences of accepting an OTH discharge, including how your discharge could prejudice you in a civilian environment. For purposes of clemency and equity consideration, the Board considered the evidence you submitted in support of your application including your legal brief with exhibits. The Board noted you did not provide any advocacy letters or other evidence of your post-service conduct or accomplishments.

As part of the Board's review process, a qualified mental health professional reviewed your contentions and the available records and issued an AO, dated 22 April 2024. The AO noted in pertinent part:

During military service, the Petitioner was properly evaluated by a psychiatrist and received no mental health diagnosis. Temporally remote to his military service, he has claimed to have a diagnosis of PTSD that may be attributed in part to military service. While there was evidence of treatment for PTSD found in the record, the treatment was time-limited and did not appear related to military service. In his current request for review, the Petitioner has provided a statement regarding traumatic precipitants that do not meet the criterion A of a diagnosis of PTSD (experiencing or witnessing actual or threatened death, serious injury or violence or learning of the violent or accidental death of a close family member or friend). While it is possible that these stressors may meet the criteria of a trauma-related mental health condition, the Petitioner has provided no medical evidence of such a diagnosis. Additional records (e.g., post-service mental health records describing diagnosis, symptoms, and their specific link to his misconduct) may contribute to an alternate opinion.

The AO concluded, "it is my clinical opinion there is insufficient evidence of a diagnosis of PTSD that may be attributed to military service. There is insufficient evidence to attribute his misconduct to PTSD.

In response to the AO, you submitted an email indicating you are a retired Clinical Social Worker and that you have never been evaluated by a mental health professional. After reviewing your rebuttal evidence, the AO remained unchanged.

After thorough review, the Board concluded your potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your lengthy UA and request to be discharged in lieu of trial by court martial, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the likely negative impact your repeated misconduct had on the good order and discipline of your command. Additionally, the Board concurred with the AO and determined that there is insufficient evidence of a diagnosis of PTSD that may be attributed to military service, and there is insufficient evidence to attribute your misconduct to PTSD. As explained in the AO, while there is evidence of treatment for PTSD found in the record, the treatment was time-limited and did not appear related to your military service. Finally, the Board noted that the misconduct that led to your request to be discharged in lieu of trial by court-martial was substantial and, more likely than not, would have resulted in a punitive discharge and/or

extensive punishment at a court-martial. Therefore, the Board determined that you already received a large measure of clemency when the convening authority agreed to administratively separate you in lieu of trial by court-martial, thereby sparing you the stigma of a court-martial conviction and possible punitive discharge.

Further, the Board noted you provided no evidence, other than your statement, to substantiate your contention that you were denied due process. The Board relies on a 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. Absent substantial evidence to the contrary, they concluded that your administrative separation processing was conducted in accordance with applicable regulations and insufficient evidence exists to support a finding that you were denied due process. In making this determination, the Board considered that you consulted with qualified legal counsel prior to submitting your request and were fully aware of the consequences of submitting your request, as documented in your request, including the fact you would likely encounter “substantial prejudice in civilian life.”

Finally, as noted above, the Board observed that you provided limited clemency matters. Additional evidence that may be useful, should you reapply to the Board, might include advocacy letters addressing your post-service conduct and/or accomplishments, or other evidence of your post-service accomplishments, such as information about your career as a clinical counselor.

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 in your present application 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,

11/14/2024

