



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

█
Docket No: 304-21
Ref: Signature Date



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.

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 6 August 2021. 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 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 a qualified mental health provider, which was previously provided to you. Although you were afforded an opportunity to submit an AO rebuttal, you did not 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 originally enlisted in the Navy on 26 July 1990. Your pre-enlistment physical examination on 17 July 1990 and self-reported medical history both noted no psychiatric or neurologic

conditions or symptoms. You last reenlisted on 26 July 1994 for six years.

While stationed on the ██████████ in ██████████ you received non-judicial punishment (NJP) at sea on 2 November 1995 for dereliction of duty and false official statements for falsifying official documents. You did not appeal your NJP.

On 18 February 1999 while stationed with Navy Recruiting District, ██████████ you received NJP for: (a) failing to obey a lawful order or regulation, (b) adultery, and (c) bigamy. You did not appeal your NJP. The corresponding performance evaluation you received for the period ending 18 February 1999 stated in the comments section: "Found guilty of violating several articles of the UCMJ. Lack of integrity and extremely poor judgment resulted in a major negative impact on his performance. Reduced to the next inferior paygrade."

Following your second NJP, you were notified that you were being processed for an administrative discharge by reason of misconduct due to the commission of a serious offense. On 16 March 1999 your commanding officer (CO) recommended that you be administratively separated with an other than honorable conditions (OTH) characterization of service. In his recommendation, your CO stated:

I strongly recommend ██████████ be discharged with an Other Than Honorable Discharge because of the severity of his offenses as supported by the enclosed evidence...Although ██████████ has been an excellent recruiter, his personal conduct has been unacceptable and his violation of the trust afforded a recruiter is intolerable. He is unsuitable for retention in the Navy due to his inability to conform with the Navy's policies on Fraternization, Adultery and Bigamy, and has proven incapable of living up to the Navy Core Values. An Other Than Honorable Discharge for Petty Officer Gover is appropriate and necessary.

In the interim, your separation physical examination on 30 March 1999 and self-reported medical history both noted no psychiatric or neurologic conditions or symptoms. On your medical history you stated that your present health was "outstanding," and that you were not currently taking any medications. On 1 April 1999 Commander, Navy Recruiting Command, approved and directed your discharge for misconduct due to the commission of a serious offense with an OTH characterization of service. Ultimately, on 23 April 1999 you were discharged from the Navy for misconduct with an OTH characterization of service and assigned an RE-4 reentry code. Unfortunately, some of the administrative separation (Adsep) documents are not in your record. However, the Board relied on a presumption of regularity to support the official actions of public officers, and given the narrative reason for separation and corresponding separation and reentry codes as stated on your Certificate of Release or Discharge from Active Duty (DD Form 214), the Board presumed that you were properly processed and discharged from the Navy for misconduct due to the commission of a serious offense after waiving your right to an Adsep board. The Board noted that in blocks 25 through 28 of your DD Form 214 it states: "MILPERSMAN 1910-142," "HKQ," "RE-4," and "Misconduct," respectively. Such DD Form 214 notations collectively refer to a discharge involving the commission of a serious offense with

an Adsep board waiver.

As part of the review process, the Board’s Physician Advisor who is also a medical doctor (MD) and a Fellow of the American Psychiatric Association, reviewed your mental health contentions and the available records and issued an AO dated 29 June 2021. The MD initially observed that the medical records you provided from the Veterans Affairs (VA) Medical Center ██████████ did not contain evidence of a PTSD diagnosis. The MD observed that the VA records indicated you received outpatient treatment involving group and individual psychotherapy for the primary diagnosis of adjustment disorder with depressed mood that was primarily related to economic problems and poor social support following incarceration for social security fraud. The MD noted that the majority of the clinical records also included considerations for rule out unspecified personality disorder (antisocial traits with comment of “long history of antisocial diagnosis symptoms”) and rule out unspecified trauma and stressor related disorder (which was listed as a diagnosis on only one clinical note). The MD ultimately determined that your active duty records did not contain evidence of a mental health condition diagnosis or psychological/behavioral changes indicating a mental health condition. The MD noted that you did not provide details supporting an experience of psychological symptoms indicating an in-service mental health condition (e.g., symptoms experienced, interference with daily function, traumatic events, or relationship to misconduct). The MD also noted that although you were diagnosed with certain post-service mental health conditions (not PTSD), the information you tendered did not provide enough information to establish an onset and development of mental health symptoms on active duty, nor identify a nexus with your in-service misconduct. The MD concluded by opining that the preponderance of objective evidence failed to establish you suffered from a mental health condition on active duty, or that your in-service misconduct could be mitigated by a mental health condition.

The Board carefully considered all potentially mitigating factors to determine whether the interests of justice warrant relief in your case in accordance with the Hagel, Kurta, and Wilkie Memos. These included, but were not limited to: (a) you suffered from severe PTSD and severe depression while serving in the Persian Gulf during Operation Desert Storm, (b) such conditions affected your personal life once back in the United States and under Navy Recruiting Command in ██████████, (c) you found it difficult and nearly impossible to maintain friendships and a marriage, which led to your decisions and the misconduct forming the basis of your discharge, (d) you served with zeal and pride and have two Navy Good Conduct Medals, an honorable discharge at the conclusion of your first enlistment, and a Navy-Marine Corps Achievement Medal, and (e) you have obtained your master’s degree in both accounting and computer information systems, and you are a 6th Dan in Taekwondo and teach martial arts nationwide. However, given the totality of the circumstances, the Board determined that your request does not merit 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 nexus between any type of mental health conditions or 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. The Board observed that your available active duty records did not contain evidence of a mental health diagnosis or condition. The Board concluded that although you have post-service mental health diagnoses, active duty records contemporaneous to your service lacked sufficient evidence to establish a nexus between your mental health conditions/symptoms and your in-service misconduct. As a result, the Board concluded that your misconduct was not due to mental health-related 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 misconduct far outweighed any and all mitigation offered by such mental health conditions. The Board determined the record clearly reflected that your misconduct was willful and intentional and demonstrated you were unfit for further service. Moreover, the Board concluded that the misconduct you committed, particularly the falsifying of official documents, adultery, bigamy, and orders violations by fraternizing are not the types of offenses that would be excused by mental health conditions even with liberal consideration. 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 otherwise not be held accountable for your actions.

The Board noted that there is no provision of federal law or in Navy/Marine Corps regulations that allows for a discharge to be automatically upgraded after a specified number of months or years. The Board did not believe that your record was otherwise so meritorious as to deserve a discharge upgrade and determined that Sailors should receive no higher discharge characterization than is due. The Board determined that characterization under OTH conditions is generally warranted for misconduct and 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. Lastly, absent a material error or injustice, the Board declined to summarily upgrade your discharge solely for the purpose of facilitating certain VA benefits or enhancing educational or employment opportunities. The Board carefully considered any matters submitted regarding your post-service conduct and accomplishments, however, even in light of the Wilkie Memo and reviewing the record holistically, the Board still concluded that given the totality of the circumstances your request does not merit relief. Accordingly, the Board determined that there was no impropriety or inequity in your discharge, and even under the liberal consideration standard, the Board concluded that your serious misconduct clearly merited your receipt of an OTH.

Additionally, despite the fact that some of your Adsep records were not in your service record, the Board relies on a presumption of regularity to support the official actions of public officers. In the absence of substantial evidence to rebut the presumption, to include evidence submitted by the Petitioner, the Board presumed that you were properly processed for separation and discharged from the Navy. In the end, the Board concluded that you received the correct discharge characterization based on your circumstances, and that such OTH characterization was in accordance with all Department of the Navy directives and policy at the time of your discharge.

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,

8/16/2021

[REDACTED]

Executive Director

Signed by: [REDACTED]