



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: 2967-21
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.

Although you did not file your application in a timely manner, the statute of limitations 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 29 October 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 the advisory opinion (AO) furnished by a qualified mental health provider, which was previously provided to you. You were afforded an opportunity to submit an AO rebuttal and you did do so.

You originally enlisted in the Navy on 6 October 1981. Your pre-enlistment physical examination on 24 September 1981 and self-reported medical history both noted no psychiatric or neurologic conditions or symptoms. On your medical history you expressly denied: (a) ever being treated for a mental condition; (b) ever being a patient in any type of hospitals; and (c) ever consulting or been treated by clinics, physicians, healers, or other practitioners within the past 5 years for other than minor illnesses. On 26 January 1982 you reported for duty on board the █ in █.

On 16 April 1982 you received non-judicial punishment (NJP) for two specifications of violating

a lawful general regulation by your unlawful possession and use of a controlled substance (marijuana). You did not appeal your NJP. On 16 May 1982 you received NJP for fifteen separate specifications of unauthorized absence (UA). You did not appeal your NJP. On 25 July 1982 you received NJP for a breach of the peace when you engaged in a fist fight on board the ship. You did not appeal your NJP.

On 1 August 1982 you were convicted at a Summary Court-Martial (SCM) of twenty-two separate specifications of UA. You were sentenced to forfeitures of pay and confinement for thirty days. On 8 September 1982 your command issued you a Page 13 counseling sheet that warned you that due to your prior involvement of a discreditable nature with military or civilian authorities, any further similar conduct will result in your being considered for separation for misconduct. On 18 October 1982 you were in a UA status on board the ship lasting one full day. On 15 December 1982 you received NJP for the wrongful possession of a controlled substance (marijuana). You did not appeal your NJP.

On 22 December 1982 you were notified of administrative separation proceedings by reason of misconduct due to a pattern of misconduct. You waived your rights to consult with counsel, submit statements to the separation authority, and to present your case to an administrative separation board.

However, in the interim, on 4 February 1983 you were convicted at a SCM of the willful disobedience of a superior commissioned officer and twenty-two separate specifications of UA. You were sentenced to forfeitures of pay and confinement for thirty days. On 28 March 1983 you were convicted at another SCM for two specifications of assault. You were sentenced to forfeitures of pay and confinement for thirty days. Ultimately, following your release from confinement, on 29 April 1983 you were discharged from the Navy with an other than honorable conditions (OTH) characterization of service and assigned an RE-4 reentry code.

As part of the review process, the BCNR Physician Advisor, who is a medical doctor (MD) and a Fellow of the American Psychiatric Association, reviewed your contentions and the available records and issued an AO dated 2 March 2021. The MD observed that your in-service records contained several instances of injuries to your head, but no evidence of loss of consciousness, amnesia, or altered sensorium (other than due to acute substance intoxication), diagnoses of concussions or traumatic brain injury (TBI), or symptoms consistent with residuals of TBI. The MD also observed that there were no health record entries citing ongoing or chronic medical, neurological, or mental health signs or symptoms indicative of residual conditions from a TBI. The MD observed that you stated your PTSD, alcohol/drug abuse/dependence arose prior to your enlistment, but noted that you failed to disclose such issues on your recruitment or accession documents. The MD also noted that the remainder of your active duty records did not contain evidence of a mental health diagnosis or psychological/behavioral changes indicating TBI, PTSD, or a mental health condition. The MD further noted that throughout your disciplinary actions, counselings, and administrative processing, there were no concerns cited warranting referral to mental health resources. The MD determined that there was no objective evidence found in your active duty records that your post-discharge diagnoses of major depressive disorder and panic disorder were present on active duty, and that although you stated you were not referred for evaluation of your substance abuse, the MD noted there was no evidence you

ever attempted to access substance abuse, counseling, or mental health treatment resources. The MD concluded by opining that although you were diagnosed post-service with certain mental health conditions, the preponderance of available objective evidence failed to establish you suffered from PTSD, TBI, or an unfitting mental health condition on active duty, or that your in-service misconduct could be attributed to 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 Kurta, Hagel, and Wilkie Memos. These included, but were not limited to your contentions that: (a) you should have been screened appropriately which would have disqualified you from entering the military based on your disabilities before enlisting; (b) your recruiter was aware of your issues and you were not screened properly and should have been deemed as unfit for military service; (c) your afflictions, before, during, and after set the pace for failure and extensive consequences that precipitated your severe mental health and social issues; (d) you have engaged in extensive rehabilitation from addiction and mental health issues and have included your current resume and proof of your endeavors; (e) you have been placed on Social Security disability; and (f) you were permitted to enter into military service despite your debilitating status which exasperated your addiction and mental health issues causing extreme physical and emotional issues that affect your life today. 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 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. The Board determined the record clearly reflected that your misconduct was willful and demonstrated you were unfit for further service. 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 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.

Additionally, 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 was 1.0 in conduct. Navy regulations in place at the time of your discharge required a minimum trait average of 3.0 in conduct (proper military behavior), for a fully honorable characterization of service. The Board concluded that your conduct marks during your active duty career were a direct result of your serious misconduct which justified your OTH characterization of discharge.

The Board determined that you had a legal, moral, and ethical obligation to remain truthful on your enlistment paperwork. The Board determined that the record reflected you clearly

intentionally failed to disclose your disqualifying pre-service mental health issues as part of your pre-enlistment medical documentation. Had you properly and fully disclosed your pre-service mental health history, you would likely have been disqualified from enlisting. The Board determined your argument the military did not properly screen you and it was somehow the Navy's fault you were allowed to enlist was not persuasive and without merit.

The Board also 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. 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 a discharge solely for the purpose of facilitating VA benefits, or enhancing educational or employment opportunities. The Board carefully considered any matters submitted regarding your post-service conduct, education, career, 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 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,

11/5/2021

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Executive Director

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