



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

█
Docket No: 3712-21

Ref: Signature Date



Dear █:

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 12 November 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 and you did not do so.

You originally enlisted in the U.S. Navy on 20 January 1976. Your pre-enlistment physical on 23 December 1975 and self-reported medical history both noted no psychiatric or neurologic conditions or symptoms. You reenlisted on 5 October 1979.

During your first enlistment, on 10 January 1979 you were convicted at a Special Court-Martial (SPCM) of unauthorized absence that lasted for 110 days. You received as punishment, a

reduction in rank to the enlisted paygrade E-2, confinement for forty-five days, and forfeitures of pay.

On 20 November 1980 you received non-judicial punishment (NJP) for UA. You did not appeal your NJP. On 23 January 1981 you received NJP for insubordinate conduct. You did not appeal your NJP. On 25 September 1981 you received NJP for UA. You did not appeal your NJP. On the same day your command issued you a "Page 13" counseling sheet (Page 13) documenting your frequent involvement of a discreditable nature with military authorities. The Page 13 expressly warned you if you did not overcome your deficiencies within a reasonable amount of time, you would be processed for an administrative separation which could result in an other than honorable (OTH) discharge characterization. You did not make a Page 13 rebuttal statement.

However, on 20 January 1982 you were convicted at a Summary Court-Martial of three separate specifications of UA, missing ship's movement, and the violation of a lawful general regulation by wrongfully possessing a dangerous weapon. As punishment you were sentenced to confinement for fifteen days, a reduction in rank to the enlistment paygrade E-3, and forfeitures of pay.

On 19 April 1982 you received NJP for two separate specifications of UA lasting six and sixteen days, respectively. On 7 June 1982 your command notified you that you were being processed for an administrative discharge by reason of misconduct due to frequent involvement of a discreditable nature with military authorities. On 21 June 1982 you consulted with counsel and waived your rights to submit written statements and request an administrative separation board. In the interim, however, on 22 July 1982 you left your command without authority and commenced another UA. On 10 August 1982 the separation authority approved and directed your OTH discharge, but the command held your separation in abeyance until your return to military control.

On 27 March 1984 your UA terminated following your arrest by civilian authorities in █
█ for reckless driving and your subsequent return to military control. Rather than administratively separate you, your command charged with your long-term UA that lasted 675 days.

On 3 May 1984, based on your guilty plea, you were convicted at a SPCM of your 675-day UA. You received as punishment a reduction in rank to the lowest enlisted paygrade (E-1), confinement for five months, forfeitures of pay, and a discharge from the Navy with a Bad Conduct Discharge (BCD).

On 20 September 1984 the Court of Military Review determined that your SPCM findings and sentence were legally and factually sufficient. Upon the completion of appellate review in your case, on 7 March 1985 you were discharged from the Navy with a BCD and assigned an RE-4 reentry code.

As part of the Board review process, the BCNR Physician Advisor who is a medical doctor and Fellow of the American Psychiatric Association (MD), reviewed your contentions and the

available records and issued an AO dated 4 October 2021. The MD initially noted that you did not describe any traumatic events, psychological symptoms and/or behavioral changes supporting a mental health diagnosis, occupational impairment due to your purported mental health condition, or a nexus between your misconduct and a mental health condition. The MD noted there were no additional in-service or post-discharge clinical records presented for review containing a mental health diagnosis or clinical history indicating a mental health condition. The MD further noted the remainder of your in-service records did not contain any diagnosed mental health conditions, symptoms or behaviors indicative of a mental health condition, nor any nexus between your misconduct and a mental health condition. The MD also noted you did not provide any in-service or post-discharge clinical records in support of your petition indicating a mental health diagnosis. The MD noted that throughout your disciplinary actions and administrative processing, there were no concerns cited warranting referral to mental health resources. The MD determined that you did not present any evidence your experiences of military or life stressors were extraordinary or unique. The MD concluded by opining that the preponderance of objective evidence failed to establish you incurred a mental health condition on active duty, or that your in-service misconduct could be attributed to an unfitting 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 your contentions that: (a) you developed mental and psychiatric illness on active duty and as a result a drinking problem to self-medicate due to the emotional pressure and stress of military service; (b) you started drinking to deal with the tension and pressure due to constant pressure from your supervisor; (c) you developed an alcohol disorder due to problems on the ship and also when your mother had terminal bone cancer; (d) you are truly sincerely apologetic and sorry for issues you caused the military for what happened relating to the charges and discharge; and (e) you respectfully request that your mental illness developed on active duty be considered in mitigation for your misconduct for purposes of any discharge upgrade. 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 convincing evidence you suffered from any type of diagnosed mental health conditions while on active duty, or that any such mental health conditions were related to or 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. 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. The Board also concluded 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.

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. Additionally, 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. Thus, 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 egregious pattern of serious misconduct and disregard for good order and discipline clearly merited your receipt of a BCD.

The Board also noted that, although it cannot set aside a conviction, it might grant clemency in the form of changing a characterization of discharge, even one awarded by a court-martial. However, the Board concluded that despite your contentions this is not a case warranting any clemency. You were properly convicted at a SPCM of serious misconduct, and the Board did not find any evidence of an error or injustice in this application that warrants upgrading your BCD. 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.

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,

12/1/2021

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Executive Director

Signed by: █