



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: 3763-21

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 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 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 an advisory opinion (AO) furnished by qualified mental health provider, which was previously provided to you. Although you were afforded an opportunity to submit a 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 enlisted in the Navy on 29 January 1986. Your pre-enlistment physical examination and medical history on 30 May 1985 both noted no psychiatric or neurologic conditions or symptoms. You admitted pre-service petty larceny and check forgery offenses on your enlistment application. On 30 November 1986 you reported for duty on board the ██████████ ██████████ in ██████████

On 8 August 1986 your command issued you a “Page 13” counseling warning (Page 13) for failing to pay your just debts to local merchants. The Page 13 expressly warned you that any further deficiencies in performance and/or conduct may result in disciplinary or administrative action. You did not make a rebuttal statement to the Page 13. On 21 August 1986 your command issued you another Page 13 documenting your being disenrolled from your “A” school for security clearance ineligibility reasons.

On 12 September 1986 you commenced a period of unauthorized absence (UA) that terminated after five days on September 17, 1986. On 1 December 1986 you commenced another UA period that terminated after thirty-six days on 6 January 1987 with your return to military authorities.

On 17 March 1987 you received non-judicial punishment (NJP) for your UA, false official statement, and forgery. You did not appeal your NJP. On 2 September 1987 your command issued you a Page 13 documenting your NJP.

On 18 December 1987 you received NJP for insubordinate conduct. You did not appeal your NJP. On 17 January 1988 you received NJP for larceny and for the forgery of your PQS Damage Control booklet. You did not appeal your NJP.

On 21 January 1988 you were notified of administrative separation proceedings by reason of misconduct due to the commission of a serious offense. You waived your rights to consult with counsel and to present your case to an administrative separation board. In the interim, your separation physical on 28 January 1988 and self-reported medical history noted no psychiatric or neurologic issues or symptoms, and did not note any traumatic brain injuries (TBI). Ultimately, on 8 February 1988 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 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 14 September 2021. The MD noted that you did not describe any experiences of serious head injury resulting in loss of consciousness, amnesia, or altered sensorium, or psychological symptoms or behavioral changes indicative of a mental health condition or a TBI. The MD observed that there were no additional in-service or post-discharge clinical records in support of your mental health claims. The MD also observed that there were no active mental health conditions at the time of your discharge. The MD determined that the remainder of your in-service records did not contain evidence of mental health diagnosis or psychological or behavioral changes indicating a mental health condition or TBI

medical/neurological markers. The MD noted that throughout your disciplinary actions, counselings, and administrative processing, there were no concerns noted warranting referral to mental health resources. The MD also noted that although you claimed a mental health condition, you did not you did not: (a) provide any description of symptoms meeting the criteria for a mental health condition, (b) indicate how those symptoms interfered with your ability to function, or (c) link any mental health symptoms to your active duty misconduct. The MD concluded by opining that the preponderance of objective evidence failed to establish you suffered from TBI or an unfitting mental health condition on active duty, or that your misconduct could be attributed to TBI or other mental health conditions.

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) after being accused of forging your firewatch and DC quals and after you requested that NCIS do a review, your command offered to give you an OTH discharge and automatically upgrade it after one year if you didn't involve them; (b) you agreed and after twelve years the upgrade never occurred; (c) two of your disciplinary incidents were fabricated; and (d) you were involved in operations that the VA was aware about. However, given the totality of the circumstances, the Board determined that your request does not merit relief.

In accordance with the Kurta, Hagel, 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 that you suffered from any type of mental health condition or a TBI while on active duty, or that any such mental health conditions or symptoms 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 symptoms or a TBI. The Board determined that despite having suffered some minor head injuries on active duty, there was no nexus between any such injuries and/or their related symptoms and your active duty misconduct. Moreover, the Board concluded that even if your misconduct was somehow attributable to any mental health conditions, 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 intentional and demonstrated you were unfit for further service. The Board noted that you did not provide any convincing evidence to corroborate your contentions that two of your NJP incidents were fabricated, or that your command offered to automatically upgrade your discharge. The Board concluded 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.

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 2.80 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 also noted that there is absolutely 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 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.

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,

11/3/2021

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Executive Director

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