



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

Docket No: 3807-21

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 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 8 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 a qualified mental health provider.

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 13 February 1996. Your pre-enlistment physical examination on 5 July 1995 and self-reported medical history both noted no psychiatric or neurologic conditions or symptoms. Specifically, on your medical history you expressly denied and answered "no" to: (a) ever attempting suicide; (b) ever being treated for a mental condition; (c) ever being a patient

in any type of hospital; and (d) have you consulted or been treated by clinics or physicians within the past 5 years for other than minor illnesses. You did admit pre-service marijuana use, but only on just two previous occasions. Your record reflects that you received enlistment waivers for your marijuana use two times, your GED, and for your US Army Delayed Entry Program discharge.

On 2 August 1996 you commenced a period of unauthorized absence (UA) that terminated after two days with your return to military authorities. On 14 August 1996 your command issued you a "Page 13" counseling sheet informing you that you were not recommended for advancement to E-4 due to a demonstrated lack of military bearing.

On 22 August 1996 you were admitted to Naval Hospital [REDACTED] Mental Health Clinic after an intentional overdose of Nyquil (containing acetaminophen) in the context of wanting a discharge from the Navy. During a mental health evaluation you described a long history since early adolescence of intense, inappropriate anger, affective instability, and drug and alcohol abuse. You stated that you previously attempted suicide in 1995 by cutting your wrists, which resulted in a psychiatric hospitalization. You also admitted to almost daily marijuana use beginning at the age of 13 and continuing for the next three to four years, and that during such time you also became involved in trafficking marijuana with your brother. You further admitted during this time you were drinking heavily, and that the first time you became intoxicated was at age 13. The Navy Medical Officer (NMO) diagnosed you with an adjustment disorder with mixed disturbance of conduct and emotions, alcohol dependence with physiologic dependence; cannabis dependence in sustained full remission, and an anti-social personality disorder with borderline features, severe, existed prior to enlistment. The NMO recommended your expeditious administrative separation from the Navy.

On 6 September 1996 you received non-judicial punishment (NJP) for your previous UA. You did not appeal your NJP. On the same day your command issued you a "Page 13" counseling sheet documenting your NJP. You did not submit a rebuttal to the Page 13.

On 17 September 1996 you were notified that you were being processed for an administrative discharge by reason of: (a) defective enlistment and induction – fraudulent entry into the naval service, and (b) convenience of the government on the basis of a personality disorder. You elected in writing to consult with counsel, but waived your rights to submit a written statement for consideration and to General Court-Martial Convening Authority review of your separation. In the interim, during your separation physical you again ever denied attempting suicide on your medical history. Ultimately, on 24 October 1996 you were discharged from the Navy for fraudulent enlistment with a general (under honorable conditions) (GEN) characterization of service and assigned an RE-4 reentry code.

As part of the Board review process, the BCNR Physician Advisor who is a licensed clinical psychologist (Ph.D.), reviewed your contentions and the available records and issued an AO dated 10 September 2021. The Ph.D. initially observed that you were diagnosed on active duty with adjustment disorder with mixed disturbance of conduct and emotions, anti-social personality disorder with borderline traits, and alcohol dependence, and noted that your

adjustment disorder diagnosis appeared to be secondary to missing your 20-month-old daughter. The Ph.D. noted that your personality disorder diagnosis was based on a history to include fighting during adolescence, intense, inappropriate anger, running away from home, as well as drug and alcohol abuse. The Ph.D. concluded by opining that although your mental health condition may mitigate your UA, it did not mitigate your nondisclosure of a suicide attempt and psychiatric hospitalization prior to entry into the USN. In response to the AO you submitted civilian clinical records from 2007-2008 with diagnoses including bipolar disorder type I mixed episode, anxiety disorder not otherwise specified, cocaine abuse, and marijuana abuse.

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) your psychiatric evaluation prior to and on active duty were documented properly; (b) you never received medical treatment upon discharge; (c) you suffer from several mental health conditions post-service; and (d) you were never aware that you could update your discharge characterization due to psychiatric diagnosis. 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 concurred with the AO, and also concluded that you were appropriately separated with a GEN because you clearly had multiple disqualifying mental health and substance abuse issues upon entry into the Navy. The Board also 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 fraudulent entry discharge. Additionally, the Board determined that you had a legal, moral, and ethical obligation to remain truthful on your enlistment paperwork. Had you properly and fully disclosed your pre-service suicide attempt and your mental health and substance abuse issues, you would have been disqualified from enlisting. The Board determined the record clearly reflected that your lack of disclosure about your mental health history and substance abuse was intentional and demonstrated you were unfit for further service. The Board also noted 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 determined that your Navy service records and DD Form 214 maintained by the Department of the Navy (DoN) contain no known errors. Moreover, the Board noted that a fraudulent enlistment occurs when there has been deliberate material misrepresentation, including the omission or concealment of facts which, if known at the time, would have reasonably been expected to preclude, postpone, or otherwise affect a Sailor's eligibility for enlistment. You clearly intentionally failed to disclose your disqualifying pre-service mental health and substance abuse issues as part of your pre-enlistment medical documentation.

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 GEN or other than honorable (OTH) conditions 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 generally will not 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, accomplishments, and medical issues, 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 fraudulent entry in the Navy clearly merited your receipt of a GEN and no higher, and that such characterization was proper and in compliance with all DoN 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,

10/22/2021

Executive Director