



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

█  
Docket No: 4127-21

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 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 4 January 1995. Your pre-enlistment physical examination on 30

June 1993 and self-reported medical history both noted no psychiatric or neurologic conditions or symptoms.

On 24 May 1995 you received non-judicial punishment (NJP) for two specifications of unauthorized absence (UA), two separate specifications of a failure to obey a lawful general order, and dereliction of duty. You did not appeal your NJP. Your command issued you a “Page 13” counseling warning documenting your misconduct from your NJP.

On 3 July 1995 you were admitted to the psychiatric unit at Naval Hospital ██████████. You received comprehensive psychiatric evaluation during your hospitalization that lasting 25 days. You were diagnosed with malingering, and an antisocial personality disorder as manifested by conscious distortion of the truth. You were discharged from the psychiatric unit on 28 July 1995. The attending physician stated the following in his clinical note:

It is my opinion that the patient does not need to be in a psychiatric hospital. He only used psychiatric hospitalization to fake mental illness and avoid responsibility for his behavior.

This individual has a severe personality disorder, namely, antisocial personality disorder. This personality disorder is not considered amenable to effective treatment in the military setting. This individual is considered to present a continuing danger to himself or others should expeditious administrative separation not be undertaken. This patient remains a suicide threat and should be observed cautiously to prevent him from harming himself. Any suicidal behavior would not be a product of a mental illness but rather a product of a desire to avoid responsibility for unauthorized absence or other misbehavior noted previously.

The patient is discharged on a regular diet with no physical limitations and no psychotropic medications. He does not require psychiatric followup. He would likely use psychiatric followup to manipulate the system to avoid responsibility for his charges.

On 28 July 1995, you were notified of administrative separation proceedings by reason of misconduct due to the commission of a serious offense, and convenience of the government on the basis of a personality disorder. You exercised your right to submit a statement on your own behalf, but waived your rights to consult with counsel and to present your case to an administrative separation board. In the interim, you commenced a period of UA on 28 August 1995 that ended on 30 August 1995. Ultimately, on 5 December 1995 you were separated from the Navy for misconduct with an other than honorable (OTH) characterization 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 8 October 2021. The Ph.D. initially noted that personality disorders are characterized by a longstanding pattern of unhealthy behaviors, dysfunctional relationships, and maladaptive

thinking patterns. The Ph.D. stated that personality disorders are *not* conditions considered unfitting or disabling (and therefore eligible for referral to a Medical Board or the Physical Evaluation Board), but do render someone unsuitable for military service. The Ph.D. noted that the stressors of military life are different than those in civilian life, consequently, it is typical for a personality disorder to improve after separation from service and the restrictive and demanding military environment. The Ph.D. determined given that there was no evidence of additional mental health services post-discharge, and that it was likely that your behavior on active duty was related to your personality disorder, rather than another mental health condition. The Ph.D. concluded by opining that there was insufficient evidence you experienced an unfitting mental health condition on active duty, or that your misconduct could be mitigated by 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 Kurta, Hagel, and Wilkie Memos. These included, but were not limited to your contentions that: (a) that you do not remember all of the details regarding your discharge and your medical records show poor insight and poor judgment; (b) your discharge status was made in error because you were told your discharge was going to be a general (under honorable conditions) (GEN) and not OTH; and (c) the letter from your Podiatrist states your inability to follow directions concerning your health might be related to a mental health disorder. 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 insufficient evidence that you suffered from any type of unfitting mental health condition 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 conditions or symptoms, and that even if your misconduct was somehow attributable to any mental health conditions, the severity of your misconduct outweighed any mitigation offered by such mental health conditions. 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 otherwise not be held accountable for your actions.

The Board concurred with the AO that personality disorders are characterized by a longstanding pattern of unhealthy behaviors, dysfunctional relationships, and maladaptive thinking patterns. They are not conditions considered unfitting or disabling, but render service members unsuitable for military service and consideration for administrative separation. Accordingly, the Board concluded that your personality disorder was a non-disabling disorder of character and behavior, and that it should not be considered a mitigating factor in your misconduct because it did not impair your ability to be accountable for your actions or behaviors. The Board also determined the record clearly reflected that your misconduct was intentional and demonstrated you were unfit for further service.

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 also determined that you did not provide convincing evidence to corroborate your contention that you were told your discharge was going to be GEN and not OTH. 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 cumulative 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, \_\_\_\_\_  
12/1/2021

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Executive Director  
Signed by: █