



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: 4533-21
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 17 December 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. 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 U.S. Navy Reserve (USNR) on 17 April 2003 for a period of eight years. You were initially assigned to a USNR unit situated in █. However, between

20 March 2005 and 12 June 2005 you accumulated fourteen (14) unexcused absences from your regularly scheduled drill weekends.

On 29 July 2005 your command mailed to your home address of record via U.S. Certified Mail a notification of administrative separation (Adsep) proceedings by reason of unsatisfactory participation in the Ready Reserve and a corresponding acknowledgment/election of rights form. You signed for the Adsep package, but you failed to return the Adsep acknowledgment/election of rights paperwork in a timely manner. Your failure to complete the Adsep notification package and election of rights and return it to the command on a timely basis operated as a waiver of your rights in connection with the Adsep board. Ultimately, on 29 September 2005 you were separated from the USNR for unsatisfactory participation in the ready reserve with a general (under honorable conditions) (GEN) characterization of service and assigned an RE-4 reentry code. In this regard, you were assigned the correct characterization and reentry code based on your factual situation.

As part of the review process, the BCNR Physician Advisor who is also a medical doctor (MD) and a Fellow of the American Psychiatric Association, reviewed your mental health contentions and the available records and issued an AO dated 22 October 2021. The MD initially observed that you not describe any occupational impairment due to a mental health condition, or a nexus between your unsatisfactory participation in the USNR and any mental health condition. The MD noted that your available service records did not contain evidence of a head injury, sequelae from a head injury, a diagnosed traumatic brain injury (TBI) or mental health conditions, or any symptoms or behaviors indicative of TBI or an unfitting mental health condition. The MD further noted that there was no in-service or post-discharge clinical evidence presented to support your contention of a head injury, or sequelae from a head injury. The MD concluded by opining that the preponderance of objective evidence failed to establish you either suffered from a TBI, or any other unfitting mental health conditions at the time of your military service. The MD also opined that the evidence failed to establish that your unsatisfactory participation with your USNR requirements could be attributed to a TBI or other 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) that during training at ██████████ Naval Weapons Station, you were struck in the head by a cargo container; and (b) since the head injury you suffer blackouts, mood swings including depression, and anger outbursts. 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, even under the liberal consideration standard, the Board concluded that there was no convincing evidence that you suffered from any type of service-connected mental health-related condition or TBI while in the USNR, or that any 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 TBI or mental health-related symptoms. The Board also noted that no evidence exists in the record that you ever made up any missed drills. The Board determined the record clearly reflected that your misconduct was intentional and demonstrated you were unfit for further service. 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 otherwise not be held accountable for your actions.

Additionally, 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. The Board determined that characterization under GEN conditions is appropriate when the basis for separation in the USNR 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 and medical treatment, 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 the Board concluded that your misconduct involving shirking your USNR responsibilities clearly merited your GEN discharge and RE-4 reentry code.

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,

1/11/2022

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Executive Director
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