



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: 5295-21
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 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 7 January 2022. 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.

You enlisted in the Navy on 24 March 1997. Your pre-enlistment physical examination on 31 December 1996 and self-reported medical history both noted no psychiatric or neurologic conditions or symptoms. On your enlistment paperwork you disclosed a pre-service DUI conviction. Following the completion of initial recruit training, on 1 September 1998 you reported for duty on board the █ in █.

On 22 Oct 1997 you received non-judicial punishment (NJP) for driving under the influence of alcohol. Your documented blood alcohol level was .164. You did not appeal your NJP. On 22 October 1997 your command issued you a "Page 13" counseling warning (Page 13) documenting your NJP. The Page 13 expressly warned you that any further deficiencies in your performance and/or conduct may result in disciplinary action and in processing for administrative separation. However, on 11 May 1998 you received NJP for unauthorized absence (UA) and for failing to obey a lawful order. You did not appeal your NJP.

On 1 October 1998 you commenced a period of UA that terminated after six days on 7 October 1998. On 10 October 1998 you commenced another period of UA that terminated after two days on 12 October 1998.

On 20 March 1999 you underwent a mental health screening as part of a request for clearance/access to classified material. The Medical Officer (MO) specifically noted:

The patient was interviewed for a brief security screen this date...Mental health history was unremarkable and there were no reported symptoms of any prominent mood or anxiety disorder. The patient denied any suicidal or homicidal ideation. Psychosocial stressors were minimal and had a negligible impact on current work performance. There were no prominent mental health concerns at this time...The member is psychologically fit for full duty...There is no clinical basis, at present, to restrict the member's work with classified material. The member is viewed to be a psychologically suitable to maintain the requested clearance. (emphasis added).

The MO determined that there was no evidence for either: (a) active alcohol abuse or dependence; or (b) any significant substance abuse use disorder in the past or present.

On 6 April 1999 you received NJP for both UA and for making and uttering a check with insufficient funds on two separate occasions. You did not appeal your NJP. On 22 April 1999 you received NJP for obstruction of justice and wrongful appropriation. You appealed your NJP and the wrongful appropriation charge was dismissed, but not the obstruction charge.

On 17 May 1999 you were notified that you were being processed for an administrative discharge by reason of misconduct due to a pattern of misconduct and misconduct due to the commission of a serious offense. You elected in writing to consult with counsel but waived your rights to submit statements to the separation authority and to request an administrative separation board. In the interim, on 10 June 1999 you received NJP for two specifications of failing to obey a lawful order when you missed restricted musters. You did not appeal your NJP.

Your separation physical examination on 11 June 1999 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) frequent trouble sleeping; (b) depression or excessive worry; (c) loss of memory or amnesia; or (d) nervous trouble of any sort.

Ultimately, on 10 July 1999 you were discharged from the Navy for misconduct with an other than honorable (OTH) characterization of service and assigned an RE-4 reentry code.

On 12 September 2003 the Naval Discharge Review Board (NDRB) denied you any relief. The NDRB determined your OTH discharge was proper as issued and that no change was warranted. On 7 July 2021 the VA granted you a service-connection for treatment purposes only for unspecified anxiety disorder with alcohol use disorder (claimed as depression).

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 17 November 2021. The Ph.D. initially observed that you were diagnosed with alcohol dependency in 1997 and 1998 and that you completed Level III alcohol rehabilitation treatment. The Ph.D. noted that your classified information security screen was void of any mood or anxiety symptoms and neither of your alcohol dependency evaluations noted mental health symptoms. The Ph.D. also noted that there was no description of symptoms or indication of the onset of your purported anxiety in your service record. Additionally, the Ph.D. determined that misconduct involving the failure to maintain sufficient funds and writing bad checks would not be attributable to an anxiety disorder. The Ph.D. concluded by opining that the evidence failed to establish you suffered from a mental health condition on active duty or that your in-service misconduct could be mitigated by a 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) the VA granted you a service-connection for an unspecified anxiety disorder with alcohol use disorder (claimed as depression); and (b) the VA examiner stated that your anxiety began on active duty and led to your alcohol use. 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 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 discharge. The Board also concluded contrary to the VA that your anxiety disorder did not begin on active duty. The Board noted that during your mental health screenings in March 1999 the MO specifically denied any symptoms of any prominent mood or anxiety disorder, and that there were no mental health concerns at such time. The Board also noted that during your separation physical examination you expressly denied ever experiencing on active duty any psychiatric or neurologic conditions or symptoms. As a result, the Board concluded that your misconduct was not due to mental health-related conditions or symptoms. Moreover, even if the Board assumed that your misconduct was somehow attributable to any mental health conditions, the Board unequivocally concluded that the severity, frequency, and pervasiveness 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 further determined 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. The Board did not believe that your record was otherwise so meritorious as to deserve a discharge upgrade. The Board determined that characterization under 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. 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. Moreover, the Board noted that VA eligibility determinations for health care, disability compensation, and other VA-administered benefits are for internal VA purposes only. Such VA eligibility determinations, disability ratings, and/or discharge classifications are not binding on the Department of the Navy and have no bearing on previous active duty service discharge characterizations.

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 pattern of misconduct clearly merited your receipt of an OTH, and that such characterization was proper and in compliance with all Department of the Navy 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,

1/18/2022

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Executive Director

Signed by █