



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: 5372-21

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 7 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 Navy on 22 Feb 2001. Your pre-enlistment medical examination on

14 February 2001 and self-reported medical history both noted no psychiatric or neurologic conditions or symptoms. On 9 August 2001 you reported for duty on board the ██████████ ██████████ in ██████████

On 10 February 2003 you received non-judicial punishment (NJP) for two separate specifications of false official statements, destruction of military property, and larceny. You did not appeal your NJP. On the same day you received a “Page 13” counseling sheet (Page 13) documenting your NJP and noting your failure to conform to military rules and regulations. 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.

On 5 April 2003 you received NJP for two separate specifications of insubordinate conduct, two separate specifications of failing to obey a lawful order, and unauthorized absence (UA). You did not appeal your NJP. On the same day you received a Page 13 expressly warning you that any further deficiencies in your performance and/or conduct may result in disciplinary action and in processing for administrative separation.

On 28 May 2003 you received NJP for insubordinate conduct, destruction of military property, and assault. You did not appeal your NJP.

On 29 May 2003 you were notified that you were being processed for an administrative discharge by reason of misconduct due to the commission of a serious offense, and misconduct due to a pattern of misconduct. You waived your rights to consult with counsel, submit statements to the separation authority, and to request an administrative separation board. In the interim, you received NJP for failing to obey a lawful order by missing multiple restricted musters. Ultimately, on 2 July 2003 you were discharged from the Navy for misconduct with an other than honorable (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 24 October 2021. The MD initially observed that you reported post-discharge episodes of depression, PTSD, super-elation to bedridden depression over the course of a few hours, and that at times you cannot function. The MD noted that you did not describe a relationship between your post-discharge psychological complaints and in-service occupational impairment, or a nexus with your misconduct. The MD further noted that you did not provide any in-service or post-discharge clinical evidence of a mental health diagnosis. The MD also noted that the remainder of your available records indicated that throughout your active duty service, disciplinary actions and administrative processing, there were no indications of a mental health condition requiring referral to mental health resources. The MD concluded by opining that there was no objective evidence to support your contention of PTSD or any other mental health condition incurred on active duty, or that your misconduct could be attributed to PTSD or any other 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) since you left the Navy you have been experiencing massive anger issues and manic episodes from depression to PTSD; (b) your family depends on you and there are times you cannot function; (c) you cannot be seen at the VA hospital with your characterization of discharge; (d) you are desperate and cannot handle the way you are now and you need help; and (e) you can't hold a job and you're afraid you will snap at family or someone else and need a doctor to help with your situation. 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 while on active duty, or that any such mental health condition was 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. Moreover, the Board observed that you did not submit any clinical documentation or treatment records to support your mental health claims despite a request from BCNR on 1 September 2021 to specifically provide additional documentary material. The Board determined the record clearly reflected that your active duty misconduct was intentional and willful 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 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 declined to 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 even under the liberal consideration standard for mental health conditions, the Board concluded that your pattern of 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, _____

12/25/2021

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Executive Director

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