



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: 5525-21

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 4 February 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.

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 9 June 1999. Your pre-enlistment medical examination on 12 January 1999 and self-reported medical history both noted no neurologic or psychiatric conditions or symptoms. Specifically, on your pre-enlistment medical history you expressly

denied and answered “no” to ever attempting suicide. You admitted to using marijuana pre-service only on one instance in April 1998, but you also denied any and all other drug use and alcohol abuse. On 28 October 1999 you reported for duty on board the █ in █.

On 11 January 2000 you commenced a period of unauthorized absence (UA) that terminated after ten (10) days on 21 January 2000. On 24 January 2000 you underwent a psychiatric evaluation. You were diagnosed with an adjustment disorder with mixed disturbance of emotions and conduct, polysubstance dependence, and borderline personality disorder. The Medical Officer (MO) strongly recommended Level III inpatient drug abuse rehabilitation treatment and also recommended a routine administrative separation for unsuitability. The MO determined that you were not mentally ill, not suicidal or homicidal, and entirely responsible for your actions. The MO determined that you manifested a long-standing disorder of character and behavior of such severity as to interfere with serving adequately in the Navy.

Contrary to your self-reported medical history, during your psychiatric evaluation you stated to the Medical Officer that between the ages of 15 and 18 you used marijuana on a daily basis and LSD and cocaine on a weekly basis. You also acknowledged a history of blackouts from both alcohol and drug use. Moreover, you admitted to a history of repeated incidents of self-mutilating behavior.

On 27 January 2000 you commenced a period of UA that terminated after six (6) days on 2 February 2000. On 9 February 2000 you commenced another period of UA that terminated after fifteen (15) days on 24 February 2000. On 7 March 2000 you received non-judicial punishment for your three UA periods. You did not appeal your NJP.

On 13 March 2000 you underwent a medical evaluation. The Medical Officer recommended your administrative separation, and noted that you expressly declined drug abuse rehabilitation treatment for your addictive behavior. On 14 March 2000 the ship’s Senior Medical Officer (SMO) recommended to the ship’s Legal Officer that you be expeditiously separated from the Navy. The SMO noted your diagnosis of polysubstance dependence and recommended Level III inpatient treatment, but the SMO noted you were not amenable to such treatment.

On 15 March 2000 you received NJP for the wrongful use of a controlled substance. You did not appeal your NJP. On 15 March 2000 you underwent a separation physical examination. During the examination you admitted to the Medical Officer, again contrary to your pre-enlistment medical history, that on four separate occasions you attempted suicide.

On 16 March 2000 your command notified you that you were being processed for an administrative discharge by reason of misconduct due to drug abuse, misconduct due to the commission of a serious offense, and a personality disorder. You elected in writing to waive your rights to consult with counsel, submit statements for consideration, and to request a hearing before an administrative separation board. Ultimately, on 28 April 2000 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 31 July 2002 the Naval Discharge Review Board (NDRB) denied your application for relief. The NDRB determined that your discharge was proper as issued and that no change was warranted. The NDRB concluded the record was devoid of evidence that you were not responsible for your conduct or that you should not be held accountable for your actions.

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 23 December 2021. The Ph.D. initially observed that your in-service records did contain evidence of behavioral changes resulting in your January 2000 mental health evaluation, your March 2000 inpatient hospitalization, subsequent treatment/diagnoses, and administrative discharge. The Ph.D. noted that a personality disorder is a lifelong pattern of unhealthy behaviors and thinking patterns, and are chronic disorders not typically amenable to treatment within the operational requirements of the Naval service. Therefore, the Ph.D. noted that a personality disorder is not subject to the Physical/Medical Evaluation board as an unfitting for service condition. The Ph.D. determined that no information was provided to indicate your in-service personality disorder was diagnosed in error. The Ph.D. concluded by opining that your personality disorder diagnosis was properly evaluated and diagnosed, and that there was insufficient evidence that your misconduct was attributable to 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) there was a failure to recognize and treat your disease of addiction, and (b) your post-service conduct was deserving of an upgrade to your discharge. 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 you were appropriately separated with an OTH for misconduct and that you also clearly had multiple disqualifying mental health concerns 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 discharge. As a result, the Board concluded that your misconduct was not due to mental health-related conditions or symptoms. The Board also determined that the Navy timely diagnosed your drug dependence but you refused the free intensive rehabilitation treatment. The Board also observed that you did not submit any clinical documentation or treatment records to support your mental health claims despite a request from BCNR on 14 September 2021 to specifically provide additional documentary material. Even if the Board assumed that your misconduct was somehow attributable to any mental health conditions, the Board unequivocally concluded that the severity of your misconduct far outweighed any and all mitigation offered by such mental health conditions. 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 multiple pre-service suicide attempts and alcohol and polysubstance abuse

history, you would have absolutely been disqualified from enlisting. The Board determined the record clearly reflected your misconduct and your lack of disclosure about your pre-service mental health and behavioral issues, and your drug/alcohol abuse history were 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 unequivocally determined that your Navy service records and DD Form 214 maintained by the Department of the Navy contained 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. The Board concluded that you clearly intentionally and willfully failed to disclose your disqualifying pre-service mental health issues and drug/alcohol abuse as part of your pre-enlistment medical documentation and application.

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, 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.

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,

2/8/2022

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Executive Director

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