



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

█
Docket No: 5677-21
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 19 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, an Advisory Opinion (AO) from a qualified mental health provider, 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. 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 24 May 2001. Your pre-enlistment physical examination on 9 April 2001 and self-reported medical history both noted no psychiatric or neurologic conditions or symptoms. On 6 September 2001 you reported for duty on board the █ in █.

On 16 September 2001 you commenced a period of unauthorized absence (UA) that terminated after six days on 22 September 2001. On 26 September 2001 you commenced a second UA that terminated after seventeen days on 13 October 2001. On 24 December 2001 you commenced another UA that terminated after seventeen days on 10 January 2002.

On 1 February 2002 you received non-judicial punishment (NJP) for your three UA periods, insubordinate conduct, and drunk and disorderly conduct. You did not appeal your NJP. On 6 February 2002 you completed two weeks of outpatient alcohol rehabilitation treatment on board the █. On 10 February 2002 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 performance and/or conduct might result in disciplinary action and in processing for administrative separation.

However, on 14 April 2002 you commenced another UA that terminated after twenty days on 4 May 2002. While in a UA status, you missed the movement of your ship. On 11 June 2002 you received NJP for both UA and missing movement. You did not appeal your NJP. On 25 January 2003 you received NJP for failing to obey a written general regulation, provoking speeches or gestures, drunk and disorderly conduct, and communicating a threat. You did not appeal your NJP.

On 25 January 2003 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 waived your rights to consult with counsel, submit statements for consideration, and to request a hearing before an administrative separation board. In the interim, on 27 January 2003 your separation physical examination and self-reported medical history both noted no psychiatric or neurologic conditions or symptoms. Ultimately, on 4 March 2003 you were discharged from the Navy for a pattern of misconduct with an other than honorable (OTH) characterization of service and assigned an RE-4 reentry code.

On 13 July 2005 the Naval Discharge Review Board (NDRB) denied your initial application for relief. The NDRB determined that your discharge was proper as issued and no change was warranted, and also concluded that no impropriety or inequity was evident during your enlistment to merit relief.

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 29 October 2021. The Ph.D. initially observed there was no evidence in your available service record indicating you were diagnosed with a mental health condition other than substance use disorder. The Ph.D. noted that you did not provided any post-service medical records

indicating a mental health diagnosis or other mental health treatment beyond alcohol use disorder maintenance treatment. The Ph.D. concluded by opining that there was insufficient evidence you incurred an unfitting mental health condition on active duty, and insufficient evidence your misconduct could be attributed to a mental health condition other than alcohol use disorder.

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) you are not the same man you were in 2003 and not a single day goes by that you do not regret your discharge; (b) right after you turned twenty-one you started drinking heavily which led you on a road to addiction for twenty years; (c) being discharged led you to drugs and you lost everything until you entered treatment in May 2021; (d) as of today you are 90 days sober and you got your family and life back; and (e) serving your country was your proudest accomplishment and the “younger” you messed up. 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-related conditions or 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 pattern of serious misconduct was not due to mental health-related conditions or symptoms. Even if the Board assumed that your pattern of 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. The Board concluded the record clearly reflected that your misconduct was willful and 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 character of military service is based, in part, on conduct and overall trait averages which are computed from marks assigned during periodic evaluations. Your overall active duty trait average in conduct was 1.0. Navy regulations in place at the time of your discharge required a minimum trait average of 2.50 in conduct (proper military behavior), for a fully honorable characterization of service. The Board concluded that your conduct marks during your active duty career were a direct result of your pattern of serious misconduct which further justified your OTH characterization of discharge. 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 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 generally will not 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 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,

1/31/2022

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Executive Director

Signed by: █