



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: 6756-21

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 25 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 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 10 May 1995. Your pre-enlistment physical on 23 February 1995 and self-reported medical history both noted no psychiatric or neurologic conditions, symptoms,

history, anxiety, or depression. You specifically denied ever being treated for a mental condition on your pre-service medical history.

On 9 August 1995 your command notified you of administrative separation processing by reason of unsatisfactory performance as evidenced by your failure to adapt to the military environment. You waived your rights to consult with counsel, submit a written statement for consideration, and to General Courts-Martial Convening Authority review of your discharge. On 8 September 1995 you were issued a "Page 13" counseling entry where you acknowledged you were not eligible for reenlistment due to entry level performance and conduct and were being assigned an RE-4 reentry code. Ultimately, after three months and twenty-nine days on active duty, on 8 September 1995 you were discharged from the Navy with an uncharacterized entry level separation (ELS) discharge given your length of service and assigned an RE-4 reentry code. In this regard, you were assigned the correct characterization and reentry code based on your specific factual situation.

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 December 2021. The Ph.D. initially observed that you provided a personal statement in which you explained you developed a mental health condition due to childhood experiences and were experiencing some anxiety prior to your ELS discharge. The Ph.D. noted that inside of six months of enlistment, an uncharacterized ELS discharge is recommended for a multitude of reasons including medical or mental health problems incurred prior to enlistment. The Ph.D. also noted that your service record did not contain evidence of a mental health diagnosis or psychological/behavioral changes indicating a mental health condition. The Ph.D. concluded by opining that the evidence failed to establish you incurred a mental health condition on active duty that would have influenced the circumstances surrounding your ELS discharge.

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) your discharge should have been listed under honorable conditions; (b) you were having some anxiety issues and were allowed to be discharged early; (c) you have the stains, depression, and mental anxiety from years being sexually assaulted by a family member and also being abused by your mother pre-service, and these events caused your erratic behavior on active duty; (d) an uncharacterized ELS is questionable everywhere you go because it is neither an honorable or dishonorable discharge; (e) you believe you should receive credit for the time serving your country; and (f) you were diagnosed post-service with systemic lupus erythematosus and are currently seeking VA medical benefits because you cannot work and receive the medical care you need. 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 concurred with the AO and concluded that there was insufficient evidence to support your

contention of suffering from an unfitting mental health condition either on active duty or incurred as a result of your military service. Moreover, the Board concluded that there was no nexus between any purported unfitting mental health conditions and/or related symptoms and your active duty behavior underlying your discharge. Additionally, the Board determined that you had a legal, moral, and ethical obligation to remain truthful on your enlistment paperwork. You clearly failed to disclose your purported pre-service depression and anxiety as part of your pre-enlistment medical documentation. Had you properly and fully disclosed any pre-service mental health issues, symptoms, and/or conditions, you would have likely been disqualified from enlisting.

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. Moreover, the Board noted that separations initiated within the first 180 days of continuous active duty will be described as ELS except when an honorable discharge is approved by the Secretary of the Navy in cases involving unusual circumstances not applicable in your case. Lastly, absent a material error or injustice, the Board generally will not summarily upgrade a discharge solely for the purpose of facilitating VA medical care or other 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 ELS discharge, and even under the liberal consideration standard, the Board concluded that your active duty conduct clearly merited your receipt of an ELS, and that such characterization was proper and in compliance with all 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,

3/3/2022

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Executive Director
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