



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

█  
Docket No: 6983-21

Ref: Signature Date

█  
█

Dear █:

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 28 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 considered an Advisory Opinion (AO) from a qualified mental health provider.

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 8 February 1988. Your pre-enlistment physical examination on 24 Dec 87 and self-reported medical history both noted no psychiatric or neurologic conditions or symptoms. On 7 August 1988 you reported for duty on board the USS █ (█)

██████████) in ██████████.

On 13 February 1992 you were convicted at a Special Court-Martial (SPCM) of four (4) specifications of unauthorized absence, ten (10) specifications of wrongful appropriation, eight (8) specifications of check forgery, uttering a check without sufficient funds, unlawful entry of a dwelling, wrongful alteration of a military ID card, and carrying a concealed weapon. You received as punishment confinement for six (6) months, forfeitures of pay, a reduction in rank to the lowest enlisted paygrade (E-1), and a discharge from the Navy with a Bad Conduct Discharge (BCD). On 4 May 1992 the Convening Authority (CA) approved your SPCM sentence, noting specifically stated that it carefully considered a clemency recommendation submitted by the SPCM Military Judge (MJ) on your behalf.

On 26 February 1993 the appellate review for your SPCM was completed and a supplemental SPCM order directed the execution of your BCD. Ultimately, on 26 February 1993 you were discharged from the Navy with a BCD and assigned an RE-4 reentry code.

On 21 February 2013 the Board denied your initial petition for relief. You had contended, in part, that your discharge was unjust because it was based on one isolated incident in 46 months of good service, and that the MJ had written a letter to the CA recommending a suspended sentence and allowing you to continue in the military. You did not raise any mental health issues/concerns with your first BCNR petition.

On 3 November 2017 the Board administratively closed your case and did not adjudicate your second BCNR petition because you did not submit any new and material evidence for consideration. Similar to your first petition, you again contended the MJ had written a letter to the CA recommending a suspended sentence and allowing you to continue in the military, and you did not raise any mental health issues/concerns.

As part of the Board review process for your current petition, the BCNR Physician Advisor who is a licensed clinical psychologist (Ph.D.), reviewed your contentions and the available records and issued an AO dated 19 January 2022. The Ph.D. initially observed that you provided a letter from a clinical psychologist dated 4 January 2022 opining that you were dealing with PTSD as well as depression related to your military service, and that traumatic experiences during the Gulf War caused PTSD and impacted your choices. The Ph.D. also observed that your in-service records did not reveal any evidence of a mental health diagnosis or markers of a change in behavior indicative of a mental health condition. The Ph.D. noted that records contemporaneous with your service indicated you were responsible for your behavior, and that your performance evaluations indicated no occupational dysfunction. The Ph.D. determined that certain types of your SPCM misconduct may be attributable to PTSD, but other types of your SPCM misconduct were not typical behaviors associated with PTSD. The Ph.D. concluded by opining that there was evidence you exhibited behaviors associated with PTSD on active duty and that *some* of your misconduct may be mitigated by PTSD.

The Board carefully considered all potentially mitigating factors to determine whether the interests of justice warrant relief in your case in accordance with the Hagel, Kurta, and Wilkie Memos. These included, but were not limited to your contentions that: (a) your BCD is considered dishonorable for VA services; (b) your last six months on active duty should not define the character of your service; (c) the MJ recommended to the CA that your sentence be suspended and that you be allowed to continue your military career; and (d) you were a young petty officer that made a bad decision and hope the Board will carefully consider your military accomplishments and grant your discharge upgrade. However, given the totality of the circumstances, the Board determined that your request does not merit relief.

In accordance with the Hagel, Kurta, 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 there was no nexus between any mental health conditions and/or related symptoms and the majority your misconduct, and determined that there was insufficient evidence to support the argument that any such mental health conditions mitigated the SPCM misconduct that formed the basis of your discharge. The Board observed that your available active duty records did not contain evidence of a mental health diagnosis. The Board noted that although you contend you experienced combat-related trauma and have a post-service 2022 PTSD diagnosis, active duty records contemporaneous to your service lacked sufficient evidence to establish a nexus between your mental health conditions/symptoms and your in-service misconduct. As a result, the Board concluded that the majority of your misconduct was not due to mental health-related symptoms. Moreover, the Board also concluded that the overwhelming majority of the intentional misconduct underlying your BCD was not the type of misconduct that ever would be mitigated by a mental health condition. 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. The Board determined the record clearly reflected that your misconduct was willful and intentional, and demonstrated you were unfit for further service. The Board also noted that the evidence of record did not demonstrate you were not mentally responsible for your conduct or that you should not be held accountable for your actions.

The Board was also not persuaded by the MJ's clemency recommendation. The Board noted that prior to recommending clemency to the CA, the MJ unequivocally stated in his recommendation that your SPCM offenses clearly warranted the imposed sentence. Additionally, the Board noted that prior to the CA approving your SPCM sentence, the CA stated on the record that they carefully considered the MJ's clemency recommendation.

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. Additionally, absent a material error or injustice, the Board declined to summarily upgrade a discharge solely for the purpose of facilitating certain VA status or benefits, or enhancing educational or employment opportunities. Accordingly, the Board determined that there was no impropriety or inequity in your discharge, and even under the liberal consideration



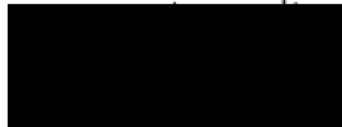
standard for mental health conditions, the Board concluded that your serious misconduct and disregard for good order and discipline clearly merited your receipt of a BCD.

The Board also noted that, although it cannot set aside a conviction, it might grant clemency in the form of changing a characterization of discharge, even one awarded by a court-martial. However, the Board concluded that this is not a case warranting clemency, and the Board did not find any evidence of an error or injustice in this application that warrants upgrading your BCD. 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.

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



Executive Director

Signed by:

