



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: 7476-21
Ref: Signature Date



Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to Title 10, United States Code, Section 1552. 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 Board waived the statute of limitation 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 the 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 to 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). The Board also considered the advisory opinion (AO) furnished by a qualified mental health provider which was previously provided to you. You were afforded an opportunity to submit a rebuttal to the AO, which you provided on 31 January 2022. This rebuttal was reviewed by the medical professional who provided the AO, but did not alter the original opinion.

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.

Your service records indicate that you entered a contractual agreement for a Uniformed Services Health Scholarship and, upon commissioning, began a period of active service in the Navy on 5 June 2016. You served without incident until 26 March 2019 at which time, although not discovered until a later investigation, you sent images of male genitalia to a foreign lieutenant. At the time, your medical privileges were granted by Commander, Naval Air Forces ██████████, on 12 July 2019, there was no indication that you had any alcohol, drug, or mental health issues. On 15 July 2019, you first treated a third class petty officer (PO3) as a patient who, several months later, after progressively unduly familiar and unprofessional communications on your part, eventually made a sexual harassment complaint against you. A subsequent investigation into his allegations further discovered that you had also sent images of male genitalia to a fellow Navy lieutenant during the month of July 2019 in violation of an order prohibiting such actions.

However, shortly after your initial patient visit with the PO3, your command suffered the catastrophic crash of an F/A-18 Super Hornet on 31 July 2019. You began an extended, on-site investigation into the mishap to locate the remains of the pilot and identify relevant human factors. Although personnel assisting you were rotated to minimize their exposure to the crash site, you remained on location throughout the duration of the investigation, which exposed you to repeated psychological trauma as you struggled to compartmentalize your duty obligations and simultaneously mourn the tragic loss of your close friend. You sought some degree of mental health assistance during the course of the investigation but did not initially realize or acknowledge the scope of the impact. You developed an alcohol abuse problem and, during this period of time, made a number of inappropriate communications to the PO3, to include sending text messages of a sexual nature. One of these texts was sent at 0750 on 27 August 2019, a duty day, another text sent the evening of 16 September 2019 asked the PO3 what style of underwear you should wear. The next day, you followed up with a series of text communications which ultimately discussed providing alkyl nitrite inhalants to your enlisted patient. This final series of interactions spurred the patient to submit a complaint of sexual harassment which resulted in an investigation of your conduct with not only that patient, but other members of the command given your position as the squadron flight surgeon. Upon being informed of the investigation, which concluded on 10 October 2019, you recognized that you had developed a problem with your alcohol use, voluntarily began Alcoholics Anonymous on 14 October 2019, and sought more robust mental health assistance.

On 16 October 2019, you were notified of nonjudicial punishment (NJP). Your clinical privileges were summarily suspended on 18 October 2019 pending a Quality Assurance Investigation (QAI). At NJP on 23 October 2019, you were found guilty of four specifications of Article 92 violations of lawful general orders and one specification of conduct unbecoming and issued a punitive letter of reprimand. In the report of NJP, your commanding officer requested that you not be detached for cause and, in recommending that you be required to show cause for retention, stated that you had otherwise been an exceptional member of his command. Your statement in response to the NJP outlined the psychological impact you had experienced as a result of your significant role during the recovery process, identified that you had been ineffectively self-medicating through alcohol use, and regretted your resulting misconduct.

You submitted a request for a qualified resignation in lieu of showing cause on 31 January 2020. Concurrent with the processing of your resignation request, the privileging authority conducted a

QAI into your professional conduct, and you also received notification of a pending recommendation from the Chief, Bureau of Medicine and Surgery (BUMED) to report your professional misconduct with your patient to the National Practitioner Data Bank (NPDB). Your qualified resignation was forwarded by the Deputy, Chief of Naval Personnel, with a recommended characterization of service of General (Under Honorable Conditions) on the basis on misconduct. This recommendation was approved by the Assistant Secretary of the Navy (Manpower and Reserve Affairs) on 17 June 2020 resulting in your discharged on 31 August 2020. Although the privileging authority reinstated your privileges on 15 December 2020, the Chief, BUMED forwarded a report of professional misconduct to NPBD on 24 December 2020.

The Board carefully weighed all potentially mitigating factors, to include your loss of a close friend, your traumatic experiences during the aviation mishap investigation, your susceptibility to self-medicating with alcohol as a result of having begun to drink more frequently in an effort to “fit in” with the aviation community as their flight surgeon, and the impact that your alcohol use had on your behavior and judgment in contributing toward your misconduct. The Board also considered your contentions regarding the impact upon your ability to obtain post-discharge employment as a result of the delay in reinstating your privileges several months after your discharge as well as your contention that the report of professional misconduct by the Chief, BUMED to the NPDB resulted from error in light of the processing and decisional authorities for such actions.

Because you based your claim, in part, upon post-traumatic stress disorder (PTSD), the Board considered the AO, which favorably noted your post-service diagnosis of PTSD by the Department of Veteran’s Administration. However, the Board concurred with the opinion of the AO that, although the evidence supports that you incurred PTSD during your military service and that it mitigated some of your misconduct, it did not mitigate misconduct which occurred prior to your experience of the traumatic events which occurred in July of 2019; specifically, your PTSD would not mitigate your misconduct in sending inappropriate images to another officer in March of 2019. As such, the Board found that your PTSD mitigated only some of your misconduct and not all of it. Additionally, the Board carefully reviewed the entirety of documents, statements, and character letters written in support of your situation during the period leading up to your separation and determined that, to the extent your experience of PTSD does mitigate some of your misconduct, the decision to grant your resignation request with a General (Under Honorable Conditions) characterization of service already took into account the mitigating effect of your PTSD. Because the Board found that your PTSD only mitigates some, but not all, of the misconduct for which you were subject to NJP and received your punitive letter of reprimand, the Board determined that neither of those records are either an error or injustice and, thus, they should remain in your official military personnel file.

With respect to your additional claims regarding the prejudicial effect of the delay of your privileging decision on your post-service employment, the Board determined that there was no resulting injustice for which corrective action would be within its purview to assess. Likewise, with respect to the report of professional misconduct by the Chief, BUMED, to the NPDB, the Board reviewed your contentions regarding the applicable authorities and your argument that your commanding officer’s recommendation and the privileging authority’s determination should take precedence over the decision of the Chief, BUMED. The Board found no error in

the regulatory process or due exercise of authority by the Chief, BUMED. Moreover, the Board noted that your misconduct, although primarily related to violation of military regulations, specifically involved interactions with a patient for whom you provided medical care; therefore, the Board determined that the assessment whether your in-service behavior also constituted reportable professional misconduct is a matter squarely within the authority and expertise of the Chief, BUMED.

Based upon the totality of its review, the Board concluded the potentially mitigating factors you submitted were insufficient to warrant the requested relief. Specifically, the Board determined that your misconduct outweighed further mitigation of your discharge or removal of your NJP. Accordingly, the Board determined that your request does not merit relief.

You are entitled to have the Board reconsider its decision upon the 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 is attached 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,

2/22/2022

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Executive Director
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