



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

█
Docket No: 7935-21

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 limitation 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 10 June 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 and commenced a period of active duty on 8 June 1998. Your pre-enlistment medical examination, on 8 June 1998, and self-reported medical history noted no psychiatric or neurologic conditions or symptoms. On 9 December 1998, you reported for duty on board the USS █ in █.

On 2 April 1999, you received non-judicial punishment (NJP) for two separate specifications of unauthorized absence (UA), failure to obey a lawful order, dereliction of duty, and underage drinking. You did not appeal your NJP. On 5 April 1999, 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 your performance and/or conduct may result in disciplinary action and in processing for administrative separation. You did not submit a Page 13 rebuttal statement.

On 17 March 2000, you underwent a drug/alcohol evaluation. You were determined to meet the diagnostic criteria for alcohol abuse, episodic. On 10 August 2000, you completed three weeks of intensive outpatient alcohol rehabilitation treatment and were provided a continuing care plan.

On 7 June 2001, you received NJP for two separate specifications of UA. You did not appeal your NJP. On 6 August 2001, you were convicted by civilian authorities in █, █ for driving under the influence. Your sentence included confinement, five years of supervised probation, and a fine.

On 29 November 2001, you were notified that you were being processed for an administrative discharge by reason of misconduct due to the commission of serious offense, misconduct due to a civilian conviction, misconduct due to a pattern of misconduct, and alcohol rehabilitation failure. You expressly waived in writing your rights to consult with counsel, submit statements on your own behalf, and to General Court-Martial Convening Authority review of your discharge. Ultimately, on 27 December 2001, you were discharged from the Navy for misconduct with a General (Under Honorable Conditions) (GEN) characterization of service and assigned an RE-4 reentry code.

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 April 2022. The Ph.D. stated in pertinent part:

During his military service, he was diagnosed with an alcohol use disorder, for which he received unsuccessful treatment. Problematic alcohol use is incompatible with military readiness and discipline. There is no evidence he was unaware of the potential for misconduct when he began to drink or was not responsible for his behavior. Unfortunately, he has provided no medical evidence in support of his claims. His personal statement is insufficiently detailed to establish a clinical diagnosis or nexus with his misconduct. Additional records (e.g., service medical records describing the Petitioner’s diagnosis and symptoms

in service, or records detailing his misconduct) are required to render an alternate opinion.

The Ph.D. concluded, [b]ased on the available evidence, it is my clinical opinion that there is insufficient evidence of a diagnosis of PTSD that may be attributed to military service. There is insufficient evidence that his misconduct could be attributed to 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 Kurta, Hagel, and Wilkie Memos. These included, but were not limited to: (a) you were not given the opportunity to a fair hearing, and (b) no Captain’s Mast (NJP) was held. For purposes of clemency consideration, the Board noted you did not provide supporting documentation describing post-service accomplishments, or advocacy letters.

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 convincing evidence that you suffered from any type of mental health condition while on active duty, or that any such mental health condition was related to or 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 symptoms. Moreover, the Board observed that you did not submit any clinical documentation or treatment records to support your mental health claims despite a request from BCNR on 10 March 2022 to specifically provide additional documentary material. The Board determined the record clearly reflected that your active duty misconduct was intentional and willful 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.

The Board noted that you received two separate NJPs as well as one civilian conviction on active duty that formed the basis underlying your discharge. Moreover, the Board further noted that no administrative board hearing took place because in accordance with Department of the Navy regulations you did not have six or more years of total active service at the time you received your administrative separation processing notice, and thus were not entitled to request a board.

The Board also observed 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 1.75. 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 GEN characterization of discharge.

Additionally, 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 GEN characterization is appropriate when significant negative aspects of a Sailor's conduct outweighs the positive aspects. 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. As a result, 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 clearly merited your receipt of a GEN discharge and no higher. Accordingly, even in light of the Wilkie Memo and reviewing the record holistically, the Board did not find evidence to support a finding of an error, injustice, or clemency that warrants upgrading your characterization of service.

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,

6/14/2022

█

Executive Director

Signed by: █