



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: 431-22
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 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 18 March 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. You were afforded an opportunity to submit an AO rebuttal, and you did 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 4 December 2001. Your pre-enlistment medical examination on 26 June 2001 and self-reported medical history noted both no psychiatric or neurologic conditions or symptoms. On 1 May 2002, you reported for

duty as a master-at-arms (MAA) with the security detachment on board [REDACTED].

On 24 July 2003, you received non-judicial punishment (NJP) for unauthorized absence, misbehavior of a sentinel/lookout, and incapacitation for duty resulting from the wrongful overindulgence of alcohol. There is no indication you appealed your NJP.

On 5 August 2003, your command notified you that you were being processed for an administrative discharge by reason of misconduct due to the commission of a serious offense. On 8 August 2003, you elected your rights to consult with counsel, submit statements for consideration, and to request General Court-Martial Convening Authority (GCMCA) review of the discharge. On 25 November 1993, the GCMCA reviewed your case and authorized your command to proceed with the administrative separation.

On 1 December 2003, your commanding officer (CO) recommended your discharge and separation with a general (under honorable conditions) (GEN) characterization of service. In his endorsement, your CO stated, in part:

Master-at-arms Seaman [REDACTED] has consistently failed to demonstrate that he can adhere to the Navy's standards. In July of 2003, MASN [REDACTED] attended Captains Mast for three charges, Unauthorized Absence, Misbehavior of a Sentry, and Drunkenness. Since attending Captains Mast, MASN [REDACTED] has been counseled at least a dozen times for his inability to conform to the Navy's standards. He has demonstrated that he is a constant administrative burden and should not be retained in the naval service. (emphasis added).

On 10 December 2003, the Separation Authority approved and directed your GEN discharge. Ultimately, on 6 January 2004, you were discharged from the Navy for misconduct with a GEN characterization of service and assigned an RE-4 reentry code.

On 2 July 2019, the Naval Discharge Review Board (NDRB) denied your application for relief. Your sole contention for the NDRB to consider was that you were seeking an upgrade to provide access to educational/G.I. Bill benefits. The NDRB determined that your discharge was proper as issued and that no change was warranted. You did not raise any mental health issues for the NDRB to consider. On 6 August 2021, the VA granted you a service-connection for a depressive disorder with alcohol use disorder, as related to your service-connected disability of migraine including migraine variants.

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 28 January 2022. The Ph.D. initially observed you provided your VA rating decision letter confirming your service-connected disability. The Ph.D. noted that the VA letter explained you underwent a VA evaluation in 2020 and did not meet the criteria for a chronic mental health disability, but that a subsequent VA evaluation in 2021 indicated you met the criteria for a depressive disorder related to your service-connected migraine disability. The Ph.D. noted that

your service record did not contain evidence of a mental health condition diagnosis or reported psychological symptoms/behavioral changes indicative of a diagnosable unfitting mental health condition. The Ph.D. noted that the medical evidence you submitted did not provide sufficient evidence of markers of a mental health condition on active duty. Moreover, the Ph.D. determined that the evidence you submitted confirmed you did not meet the criteria for a mental health condition until 2021. The Ph.D. concluded by opining that available objective evidence failed to establish you suffered from a mental health condition on active duty or that your active duty misconduct could be mitigated by a mental health condition.

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) your GEN discharge is inequitable and erroneous because you were discharged under the Kurta, Hagel, and Carson Memo policies which have been updated, (b) there is substantial doubt your discharge would have been the same under the updated policies, (c) on active duty you developed body aches, tinnitus and headaches putting you in a lot of pain which eventually lead to severe depression and heavy drinking, (d) your discharge was improper because you were not given time to seek medical help and treatment was never offered to you, (e) had your condition been properly diagnosed and treated your outcome would have been substantially different, (f) your mental health disorder presented itself on active duty and resulted in heavy drinking that clouded your judgment, (g) your poor judgment lead to multiple unfavorable decisions resulting in adverse outcomes, and (h) had your discharge error not been made and you were provided treatment, it would have allowed you to complete the remainder of your enlistment. 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 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. 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.

Moreover, the Board concurred with the AO and determined that you did not meet the criteria for an unfitting mental health condition until August 2021. The Board concluded your 2021 rated depressive disorder had absolutely no nexus to your active duty service, but instead was related to and ultimately resulted post-service from your migraine-related disability.

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 noted that, although one's service is generally characterized at the time of discharge based on performance and conduct throughout the entire enlistment, the conduct or performance of duty reflected by only a single incident of misconduct may provide the underlying basis for discharge characterization. The Board determined that characterization under other than honorable conditions (OTH) is usually appropriate when the basis for separation is the commission of an act or acts such as yours constituting a significant departure from the conduct expected of a Sailor. As a result, the Board believed you received significant leniency and clemency up front when your command decided not to seek an OTH discharge. The Board noted that as an MAA you were placed in a position of special trust and responsibility and your overall service records indicate you were a below average performer at best. 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. 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 for mental health conditions, the Board concluded that your misconduct clearly merited your receipt of a GEN and no higher.

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,

3/24/2022

