



**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: 493-22

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 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 May 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 advisory opinion (AO) furnished by a qualified mental health provider. You were afforded an opportunity to submit an AO rebuttal, and you did do so.

You enlisted in the Navy and commenced a period of active duty on 5 May 2005. Your pre-enlistment physical examination, on 31 January 2005, and self-reported medical history both noted no psychiatric or neurologic conditions, symptoms, or abnormalities. Specifically, on your medical history you expressly denied and answered "no" to: (a) ever attempting suicide, (b) ever receiving counseling of any type, (c) ever having depression or excessive worry, and (d) ever been a patient in any type of hospital.

On 2 March 2006, you underwent a psychiatric evaluation due to suicidal ideation. During such evaluation, you stated that you have had suicidal ideation for most of your adult life and you

endorsed various depressive symptoms and described that you have had such symptoms on and off since being a teenager. You stated that you were involuntarily hospitalized at age 19 after revealing suicidal thoughts and spent two months in the hospital where you were diagnosed with major depressive disorder and treated with various medications. You also admitted that you tried to hang yourself while on suicide watch, and admitted to a second separate suicide attempt. A Navy Medical Officer (NMO) diagnosed you with a dysthymic disorder and a borderline personality disorder. The NMO noted that you did not require and would not benefit from hospitalization or psychiatric treatment at that time. The NMO also noted that although you were not considered imminently suicidal or homicidal, you were judged to represent a significant and ongoing risk to self or others due to low impulse control secondary to your personality disorder. The NMO determined that you were unsuitable for military service and recommended your expeditious administrative separation.

Following an acquittal of all charges at a General Court-Martial, on 26 October 2006, you were notified that you were being processed for an administrative discharge by reason of: (a) defective enlistment and induction – erroneous enlistment, and (b) convenience of the government on the basis of a personality disorder. You elected in writing to consult with counsel, but waived your rights to submit a written statement for consideration and to General Court-Martial Convening Authority review of your separation. Ultimately, on 22 November 2006 you were discharged from the Navy for erroneous entry with an Honorable (HON) 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 10 March 2022. The Ph.D. stated in pertinent part:

Petitioner's OMPF did contain evidence of a diagnosis of a mental health condition (Dysthymia), as well as Borderline Personality Disorder. Records further showed Petitioner did not disclose prior service mental health treatment. The provider stated, Petitioner "was misled and is telling the truth that he was told by his Navy Recruiter not to disclose his mental health conditions on his Security Clearance Application..." Petitioner did not provide any information to refute the in-service diagnosis of a personality disorder.

The Ph.D. concluded, "[b]ased on the available evidence, it is my considered clinical opinion Petitioner was diagnosed with a mental health condition and personality disorder, which existed prior to his enlistment, and affected the circumstances of his discharge as was reflected in his narrative reason for separation and reenlistment code."

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) to your knowledge you did not disclose any information regarding pre-service mental health treatment, (b) beyond the assistance you sought after discharge, you have no recollection or documentation of any pre-service diagnoses of any kind, (c) you would like to be able to apply for VA benefits, (d) your discharge was done under the false pretense of separating someone that enlisted erroneously, (e) you were held in

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pre-trial confinement for several months where you were overcome with dysthymia, major and atypical depression, and (f) you want your record to reflect your true character. 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 concurred with the AO, and also concluded that you were appropriately separated with an HON discharge for an erroneous enlistment because you clearly had disqualifying mental health issues upon entry into the Navy. Additionally, the Board determined that you had a legal, moral, and ethical obligation to remain truthful on your enlistment paperwork. Had you properly and fully disclosed your pre-service suicide attempts and your mental health issues and treatment, you would have absolutely been disqualified from enlisting. The Board determined the record clearly reflected that your lack of disclosure about your mental health history was intentional and demonstrated you were unfit for further service. The Board also noted that the evidence of record did not demonstrate that you were not mentally responsible for your conduct or that you should not be held accountable for your actions.

The Board determined that your Navy service records and DD Form 214 maintained by the Department of the Navy (DoN) contained no known errors. Moreover, the Board noted that an erroneous enlistment occurs when the enlistment would not have occurred if relevant facts had been known by the DoN at the time of enlistment that would have reasonably been expected to preclude, or otherwise affect a Sailor's eligibility for enlistment. You clearly intentionally failed to disclose your disqualifying pre-service mental health issues as part of your pre-enlistment medical documentation.

Lastly, absent a material error or injustice, the Board declined to summarily change naval records solely for the purpose of facilitating VA benefits, or enhancing educational or employment opportunities, including reenlistments. As a result, in light of the Wilkie Memo and reviewing the record holistically, the Board did not find evidence of an error or injustice that warrants changing your reentry code or narrative reason for separation or granting clemency in your case. Accordingly, the Board determined that, even under the liberal consideration standard, your erroneous entry into the Navy clearly merited that specific narrative reason for separation and corresponding reentry code, and that such narrative reason and reentry code were proper and in compliance with all DoN 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,

6/10/2022

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