



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

█  
Docket No: 939-22

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 8 April 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, an Advisory Opinion (AO) from a qualified mental health provider, 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 an advisory opinion (AO) furnished by a qualified mental health provider. 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 active duty on 24 May 1990. Your pre-enlistment physical examination on 31 January 1990 and self-reported medical history both noted no psychiatric or neurologic conditions or symptoms. On 18 October 1990, you reported for duty on board the █ in █, █.

On 31 May 1991, you received non-judicial punishment (NJP) for unauthorized absence (UA) and insubordinate conduct towards a Senior Chief Petty Officer. You did not appeal your NJP. On 2 June 1991 you received a "Page 13" counseling sheet (Page 13) documenting your NJP. The Page 13 expressly warned you that any further deficiencies in performance and/or conduct may result in disciplinary action and in processing for administrative separation.

On 26 November 1991, you received NJP for assault consummated by a battery and for communicating a threat. You did not appeal your NJP. On 12 December 1991, a Page 13 entry indicated you were in a UA status for approximately thirty minutes on such date.

On 17 June 1993, you received NJP for three separate specifications of insubordinate conduct towards either a Master Chief Petty Officer or a Chief Petty Officer. You did not appeal your NJP.

On 17 June 1993, you were notified that you were being processed for an administrative discharge by reason of misconduct due to pattern of misconduct and commission of serious offenses. You waived your rights to consult with counsel, submit statements for consideration, and to request a hearing before an administrative separation board. In the interim, your separation physical examination on 23 June 1993 and self-reported medical history both noted no psychiatric or neurologic conditions or symptoms. You stated you were in good health and taking no medications at the time. You also specifically endorsed "No" to the following symptoms/conditions on your medical history: "frequent trouble sleeping," "depression or excessive worry," "loss of memory or amnesia," "nervous trouble of any sort," "attempting suicide," or "periods of unconsciousness." Ultimately, on 16 July 1993, you were discharged from the Navy for misconduct with an other than honorable (OTH) 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 14 February 2022. The Ph.D. initially determined that there was no evidence you were diagnosed with a mental health disorder on active duty. The Ph.D. noted that throughout your disciplinary processing there were no concerns raised of a mental health condition that would have warranted additional referrals. The Ph.D. also noted that your personal statement was not sufficiently detailed to establish a nexus with your misconduct. The Ph.D. concluded by opining that there was insufficient evidence you either incurred an unfitting mental health condition on active duty, or that your misconduct could be attributed to an unfitting 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, that the Hagel Memo and the Kurta Memo

expands protections for veterans whose adverse discharges were a result of the “invisible wounds” of mental illness and/or sexual trauma. 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 nexus between any purported mental health-related conditions or symptoms and your misconduct, and determined that there was insufficient evidence to support the argument that any such mental health conditions mitigated the misconduct that formed the basis of your discharge. As a result, the Board concluded that your pattern of misconduct was not due to mental health-related conditions or symptoms. 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 concluded the record clearly reflected that your misconduct was willful and intentional, 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.

Additionally, the Board determined that there was no evidence in your service record or medical record of any traumatic incidents taking place outside of the expected experiences of a Sailor deployed aboard ship. The Board also noted that the AO from April 2020 drafted for your previous BCNR petition reached the same conclusion: that there was insufficient evidence to either corroborate an active duty mental health condition, or to attribute your active duty misconduct to a mental health condition.

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 characterization under OTH conditions is generally warranted for misconduct and is appropriate when the basis for separation is the commission of an act or acts constituting a significant departure from the conduct expected of a Sailor. Lastly, absent a material error or injustice, the Board generally will not 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 NJPs or discharge, and even under the liberal consideration standard, the Board concluded that your serious misconduct clearly merited your receipt of an OTH.

Finally, the Board considered your request for placement on the disability retirement list or assignment of a disability discharge. After reviewing the evidence and relying on the AO, the

Board determined insufficient evidence of unfitness for continues naval service exists in your case. As pointed out in the AO, your record showed no evidence of a mental health diagnosis while on active duty and no concerns were raised about any unfitting conditions. As a result, the Board determined the preponderance of the evidence does not support a finding that you were unfit for continued naval service at the time of your discharge from the Navy. Further, the Board concluded you were ineligible for disability processing based on your misconduct that resulted in an OTH characterization of service. Accordingly, the Board determined insufficient evidence of error or injustice exists to merit a change to your record.

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,

4/26/2022

