



**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: 1753-22  
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 1 July 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 considered an Advisory Opinion (AO) from a qualified mental health provider. You were provided an opportunity to submit an AO rebuttal, and you did do so.

You enlisted in the Navy at age nineteen and commenced a period of active duty on 17 September 1982. Your pre-enlistment physical examination on 14 September 1982 and self-reported medical history both noted no psychiatric or neurologic conditions or symptoms. On 3 January 1983, you reported for duty on board the █ in █  
█ Subsequently, on 3 November 1983, you reported for duty on board the █  
█ in █

On 14 June 1984, you received non-judicial punishment (NJP) for unauthorized absence (UA)

lasting one day. You did not appeal your NJP. On 26 October 1985, you commenced a period of UA that terminated after eight days with your surrender on 3 November 1985. On 20 November 1985, you received NJP for your UA. You did not appeal your NJP.

On 15 January 1986, you commenced a period of UA that terminated after two days with your surrender on 17 January 1986. On 3 February 1986, you commenced a period of UA that terminated after seventy-five days with your surrender on 19 April 1986. On 28 April 1986, you commenced a period of UA that terminated after 158 days with your surrender on 3 October 1986. On 4 October 1986, you commenced a period of UA that terminated after 174 days with your arrest by civilian authorities on █ on 27 March 1987.

On 4 June 1987, you were convicted at a Special Court-Martial (SPCM) of four (4) specifications of unauthorized absence that totaled 407 days. You received as punishment confinement for seventy-five days, forfeitures of pay, a reduction in rank to the lowest enlisted paygrade (E-1), and a discharge from the Navy with a Bad Conduct Discharge (BCD). On 30 October 1987, the Convening Authority approved your SPCM sentence. On 15 April 1988, the appellate review for your SPCM was completed and a supplemental SPCM order directed the execution of your BCD. Ultimately, on 17 May 1988, you were discharged from the Navy with a BCD and assigned an RE-4 reentry 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 Hagel, Kurta, and Wilkie Memos. These included, but were not limited to: (a) while on active duty you selfishly became an alcoholic and trapped in a disease you could not get out of by yourself, (b) you made horrible decisions while under the influence of alcohol while on and off duty, (c) you were too young and ignorant to ask for help to assistance from the Navy, (d) post-service you have repaired your life and choices, (e) you have a family now, a great acting career, and a wonderful social following, (f) you apologize and take full ownership of your mistakes beginning with your failure to treat your disease of alcoholism, and (g) you have been sober now for thirty-years and a devoted father to your children. For purposes of clemency consideration, the Board noted you provided advocacy letters but did not provide supporting documentation describing post-service accomplishments.

As part of the Board review process for your current petition, the BCNR Physician Advisor who is a licensed clinical psychologist (Ph.D.), reviewed your contentions and the available records and issued an AO dated 17 May 2022. The Ph.D. noted in pertinent part:

There is no evidence that he was diagnosed with a mental health condition in military service, or that he exhibited any psychological symptoms or behavioral changes indicative of a diagnosable mental health condition. Throughout his disciplinary processing, there were no concerns raised of a mental health condition that would have warranted a referral for evaluation. Post-service, a civilian clinician has apparently determined a diagnosis of PTSD, as well as other mental health conditions including alcohol and substance use disorder, ADHD,

and severe anxiety that have been attributed to stressors incurred during military service. However, the clinician's statement is temporally remote from the Petitioner's military service and is inconsistent with his service record. For example, the record indicates 15 days of confinement, as opposed to a year, as reported to the clinician. Additionally, the provided records are not specific regarding the Petitioner's symptoms or sufficiently detailed to establish a nexus with his misconduct. Additional records (e.g., post-service mental health records describing the Petitioner's diagnosis, symptoms, and their specific link to his misconduct) would aid in rendering an alternate opinion.

The Ph.D. concluded, "[b]ased on the available evidence, it is my clinical opinion that there is post-service evidence of PTSD and other mental health conditions that may be attributed to military service. There is insufficient evidence that his misconduct may be attributed to PTSD or another mental health condition.

In response to the AO, you provided a statement arguing the findings and opinions of the AO. In addition, you requested the identity of the author and access to records used to base the opinion.

In accordance with the Hagel, Kurta, 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 there was no nexus between any mental health conditions and/or related symptoms and your misconduct, and determined that there was insufficient evidence to support the argument that any such mental health conditions mitigated the SPCM misconduct that formed the basis of your discharge. The Board observed that your available active duty records did not contain evidence of a mental health diagnosis. The Board noted that although you have a post-service PTSD diagnosis, active duty records contemporaneous to your service lacked sufficient evidence to establish a nexus between your mental health conditions/symptoms and your in-service misconduct. As a result, the Board concluded that your misconduct was not due to mental health-related 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 determined the record clearly reflected that your misconduct was willful and intentional, and demonstrated you were unfit for further service. The Board also noted that the evidence of record did not demonstrate you were not mentally responsible for your conduct or that you should not be held accountable for your actions.

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. Additionally, absent a material error or injustice, the Board declined to summarily upgrade a discharge solely for the purpose of facilitating certain VA status or benefits, or enhancing educational or employment opportunities. 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 serious misconduct and disregard for good order and discipline clearly merited your receipt of a BCD.

The Board also noted that, although it cannot set aside a conviction, it might grant clemency in the form of changing a characterization of discharge, even one awarded by a court-martial. However, the Board concluded that despite your contentions this is not a case warranting any clemency. The simple fact remains is that you left the Navy while you were still contractually obligated to serve on four separate occasions and you went into a UA status without any legal justification or excuse totaling approximately 407 days. You were properly convicted at a SPCM of serious misconduct, and the Board did not find any evidence of an error or injustice in this application that warrants upgrading your BCD. The Board carefully considered all matters submitted regarding your character, your sincere contrition, post-service conduct, and personal/professional 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.

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,

7/8/2022

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Executive Director

Signed by: █