



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: 1903-22
Ref: Signature Date



Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to Title 10, United States Code, Section 1552. 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 Board waived the statute of limitation 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 24 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 the 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 to 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). The Board also considered the advisory opinion (AO) of a qualified mental health provider, which was previously provided to you. You were afforded an opportunity to submit a rebuttal, but did not do so.

You enlisted in the Navy and began a period of active duty on 20 December 1995. You joined the █ for duty on 19 November 1996. You were counseled multiple times in March of 1997 for reporting late for galley duty twice, for disobeying an order to sweep the deck and responding by throwing food on the floor then leaving, for unauthorized absence (UA) after electing to secure early from field day without permission; you also failed to obey liberty policy by returning from liberty without a liberty buddy. You received nonjudicial punishment (NJP) on 2 April 1997 for a violation of Article 134 due to use of indecent language. You were counseled regarding retention and issued warnings for further disciplinary infractions and a

pattern of misconduct on 15 April 1997; however, you were counseled three additional times in July and August of 1997 for deficient performance of duties, for UA from your appointed place of duty after instead being found asleep in berthing, and for strolling up the pier late when your division was already mustered for quarters. On 3 September 1997, a fitness for duty exam found you unfit due to alcohol consumption, and your chain of command conducted a disciplinary review board (DRB), which assessed that you made unacceptable excuses, could often not be located for duty, and had difficulty taking orders from younger petty officers who were senior to you in rank. Your second NJP, on 9 September 1997, was for Article 134, drunkenness or incapacitation for proper performance of duty, based on the findings of your fitness for duty exam. At subsequent DRB, your leadership opined that you needed the help of a doctor or professional. Although you were sent to for anger management services, your third NJP was for Article 128, assault consummated by battery, after you struck a petty officer in the face with a cleaning brush and Article 134, for a communicating a threat during the incident.

In November of 1997, you were counseled a second time regarding retention and separation warnings for disciplinary infractions and a pattern of misconduct. Throughout February and March of 1998, you were assigned extra military instruction (EMI) due to delinquency in obtaining required watch qualifications; the majority of your EMI records reflect that the assigned instruction was incomplete or that you had failed to muster. As a result, your counseling on 16 March 1998, for wearing civilian clothes to a dental appointment and then failing to return after your appointment, addresses a litany of ongoing performance and disciplinary issues. Following another altercation in May of 1998, a DRB ultimately assessed that, although you had shown improvement since anger management and had been provoked prior to committing assault, you appeared to have a problem that was beyond your control in terms of dealing appropriately with your anger. From this incident, you received a fourth NJP on 20 May 1998 for violation of Article 128, assault consummated by battery, and you were notified of processing for administrative separation under notification procedures for a pattern of misconduct. In response to your separation proceedings, you acknowledged that you were “having a rough time starting from the bottom and trying to work [your] way up.” Your separation was approved by Commander, Naval Surface Group █, and you were discharged, on 30 June 1998, with a General (Under Honorable Conditions) character of service.

The Board carefully considered all potentially mitigating factors to determine whether the interests of justice warrant relief in your case in accordance with the Wilkie Memo. These included, but were not limited to, your desire to upgrade your discharge from the inactive reserve to Honorable and your contentions that you became depressed after your commanding officer passed away at sea in December of 2016, because he had been your mentor and role model, that you struggled to manage your symptoms of depression and anxiety which also manifested in physiological symptoms such as headaches and fainting spells, and that you had no one to talk to or help you navigate your mental health issues. For purposes of clemency consideration, the Board noted you did not provide supporting documentation describing post-service accomplishments, or advocacy letters.

Because you contend a mental health condition, the Board also considered the AO, which noted in pertinent part:

Petitioner's OMPF did not contain evidence of a diagnosis of a mental health condition. Evidence provided was insufficient to establish markers of a MHC or a nexus with his military service or misconduct. Petitioner did not provide any medical/mental health records to support his claim. Although Petitioner claimed, his symptoms started after his mentor passed, records contemporary to service indicate Petitioner had difficulty adjusting to military life. Throughout his disciplinary processing and counselings, there were no concerns raised of a mental health condition that would have warranted a referral for evaluation. Stressors in military life are different from civilian life and although healthy coping skills are important the lack thereof does not constitute a MHC.

The AO concluded, "[b]ased on the available evidence, it is my considered clinical opinion, there is insufficient evidence of a MHC that can be attributed to military service, or that his in-service misconduct could be attributed to a MHC."

Based upon this review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your NJPs, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and concluded your conduct showed a complete disregard for military authorities and regulations. The Board also concurred with the AO that there is insufficient evidence of a mental health condition that can be attributed to military service, or that your in-service misconduct could be attributed to a mental health condition. Additionally, the Board observed that you were separated under honorable conditions in spite of a lengthy and varied scope of misconduct and substandard performance, that your record reflects considerable attempts to rehabilitate both your performance and conduct deficiencies, and that your chain of command's endorsement of a separation under honorable conditions reflects that mitigating factors contemporary to your time in service were already considered at the time of that favorable recommendation. As a result, the Board concluded significant negative aspects of your service outweighed the positive aspects and continues to warrant a General (Under Honorable Conditions) characterization. After applying liberal consideration, the Board did not find evidence of an error or injustice that warrants upgrading your characterization of service or granting clemency in the form of an upgraded characterization of service. Accordingly, given the totality of the circumstances, the Board determined that your request does not merit relief.

You are entitled to have the Board reconsider its decision upon the 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 is attached to all official records. Consequently, when

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[REDACTED]

[REDACTED]