



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

█
Docket No: 2115-22

Ref: Signature Date



Dear █:

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 also considered an advisory opinion (AO) furnished by qualified mental health provider. Although you were provided an opportunity to submit an AO rebuttal, you did not do so.

You enlisted in the Navy and commenced active duty on 12 June 1991. Your pre-enlistment physical examination, on 21 March 1991, and self-reported medical history both noted no psychiatric or neurologic conditions or symptoms. On 21 December 1991, you reported for duty on board the USS █ (█) in █.

On 30 April 1992, you were evaluated by Fleet Mental Health following a suicide gesture by ingesting a sub-toxic overdose of Tylenol. The Navy Medical Officer (NMO) diagnosed you with a personality disorder (PD) not otherwise specified with antisocial and passive/aggressive features, severe. The NMO determined that your PD existed prior to your entry (EPTE) into the

Navy. The NMO concluded that you were not considered mentally ill, but manifested a longstanding disorder of character and behavior which was of such severity as to render you incapable of serving adequately in the Navy. The NMO recommended your expeditious administrative separation.

On 20 May 1992, you received non-judicial punishment (NJP) for failing to obey a lawful order, disrespect toward a commissioned officer, willfully disobeying a commissioned officer, and insubordinate conduct toward a non-commissioned officer. You did not appeal your NJP. That same day, you were again evaluated by Fleet Mental Health and similarly diagnosed with a PD not otherwise specified with antisocial and passive/aggressive features, EPTE. The NMO strongly recommended your administrative separation.

On 21 May 1992, your command issued you a "Page 13" counseling sheet (Page 13) documenting your NJP. The Page 13 expressly warned you that any further deficiencies in your performance and/or conduct may result in a substandard evaluation report, withdrawal of an advancement recommendation, disciplinary action, and/or in processing for administrative separation. You did not submit a Page 13 rebuttal statement.

On 20 November 1992, you received NJP for insubordinate conduct toward a petty officer. You did not appeal your NJP.

On 30 April 1993, you commenced a period of unauthorized absence (UA) that terminated, after thirty days, with your surrender to military control. While in a UA status, you missed your ship's movement on four separate occasions. On 3 June 1993, you received NJP for both UA and missing movement. You did not appeal your NJP.

On 4 June 1993, your command notified you that were being processed for an administrative discharge by reason of misconduct due to a pattern of misconduct. You waived your rights to consult with counsel, submit a written statement to the Separation Authority, and to request an administrative separation board. Ultimately, on 9 July 1993, you were discharged from the Navy for a pattern of misconduct with an Other Than Honorable conditions (OTH) characterization of service 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 Kurta, Hagel, and Wilkie Memos. These included, but were not limited to: (a) you are requesting a discharge upgrade due to a PD and depression, (b) you were what most would consider to be a good shipmate and advanced like you were supposed to, (c) you wish you could have stayed longer and been a better shipmate, (d) your Division Officer always had it out for you and constantly gave you a hard time, and (e) you wish you had the coping skills back on active duty that you have now. For purposes of clemency consideration, the Board noted you did not provide supporting documentation describing post-service accomplishments, or advocacy letters.

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 initial AO dated 20 May 2022. The Ph.D. stated in pertinent part:

Petitioner's OMPF did contain evidence of a diagnosis of a personality disorder. Petitioner did not provide medical/mental health records to support his claim or refute his in-service diagnosis. Petitioner was appropriately referred for psychological evaluation during his enlistment and properly evaluated. His diagnosis was based on observed behaviors and performance during his period of service, the information he chose to disclose to the mental health clinician, and the psychological evaluation performed by the mental health clinician as documented in his service records. A personality disorder is indicative of a lifelong pattern of unhealthy behaviors and thinking patterns and by definition is neither incurred in nor exacerbated by military service. Stressors in military life are different from civilian life and although healthy coping skills are important, the lack thereof does not constitute a mental health condition.

The Ph.D. 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, other than his personality disorder

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 that there was no convincing evidence of any nexus between any mental health conditions and/or their related symptoms and your misconduct, and the Board 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 misconduct was not due to mental health-related conditions or symptoms whatsoever. Moreover, 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 reflected that your 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 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. The Board did not believe that your active duty service was otherwise so meritorious as to deserve a discharge upgrade. The Board determined that characterization under OTH conditions 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 declined to summarily upgrade a discharge solely for the purpose of facilitating veterans' benefits, or enhancing educational, employment, or military enlistment

opportunities. As a result, the Board determined that your serious misconduct clearly merited your receipt of an OTH. Even in light of the Wilkie Memo and reviewing the record holistically, 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 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: █