



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



Docket No: 2660-22

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 12 December 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 afforded an opportunity to submit an AO rebuttal for consideration, you chose not to do so.

You enlisted in the Navy and entered active duty on 30 July 1990. Your pre-enlistment physical examination, on 7 December 1989, and self-reported medical history both noted no neurologic conditions or symptoms.

On 26 April 1993, you underwent a mental health evaluation. You were diagnosed with an adjustment disorder with anxious mood. The Medical Officer determined that you were fit for duty and responsible for your actions.

On 1 September 1993, you underwent another mental health evaluation. You were diagnosed with a personality disorder, not otherwise specified. The Medical Officer expressly noted that you were not suffering from a psychiatric, organic, or affective disorder.

On 22 September 1993, you received non-judicial punishment (NJP) for unauthorized absence (UA) lasting seven days, and for the failure to obey a lawful order. You did not appeal your NJP. On 27 September 1993, your command issued you a "Page 13" counseling warning (Page 13) documenting your NJP offenses. The Page 13 expressly warned you that any further deficiencies in performance and/or conduct may result in disciplinary action and processing for administrative separation. You did not submit a Page 13 rebuttal statement.

On 1 December 1993, you pleaded guilty and were convicted by civil authorities in █ for driving under the influence. Your BAC at the time of your DUI arrest was approximately 0.15.

On 3 February 1994, the suspended portion of your previous NJP was vacated and ordered enforced due to your continued misconduct. On 16 February 1994, you received NJP for UA and for failing to obey a lawful order or regulation. You did not appeal your NJP.

On 22 February 1994, your command notified you that you were being processed for an administrative discharge by reason of misconduct due to a pattern of misconduct, and misconduct due to the commission of a serious offense. You elected to waive your rights to consult with counsel, submit statements on your own behalf, and to request an administrative separation board. Ultimately, on 31 March 1994, you were discharged from the Navy for misconduct with an under Other Than Honorable (OTH) conditions 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, your desire for a discharge upgrade and contentions that: (a) you would like to be able to receive benefits for your Department of Veterans Affairs (VA) rated disabilities, (b) while assigned to █ you were suffering from anxiety and your behavior didn't match with your prior 3.8-4.0 service, (c) due to your mental illness you were not acting like yourself and were insane and couldn't make good decisions, (d) your actions were not willful, (e) you were fearful of your chain of command because they only taunted, threatened, or punitively handled any situation where you asked for help, (f) you felt you had no place to go for the help you needed, (g) prior to enlisting you didn't have a problem with alcohol and developed an alcohol problem in the Navy for which you were punished and not treated for, (h) you currently have recovered from your alcohol issues and work to help others recover from theirs, and (i) you still suffer from anxiety and have enrolled with VA medical for treatment. For purposes of clemency and equity consideration, the Board noted you did not provided VA documentation but no supporting documentation describing post-service accomplishments or advocacy letters.

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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 13 October 2022. The Ph.D. stated in pertinent part:

Petitioner was appropriately referred for psychological evaluation during his enlistment and properly evaluated over multiple encounters. He was initially diagnosed with an adjustment disorder, which resolved within a month. Subsequently, he was diagnosed with an alcohol use and a personality disorder. These diagnoses were based on observed behaviors and performance during his period of service, the information he chose to disclose, and the psychological evaluations performed by the mental health clinicians as documented in his service records. Problematic alcohol use is incompatible with military readiness and discipline. A personality disorder diagnosis is pre-existing to military service by definition, and indicates lifelong characterological traits unsuitable for military service. Post-service, he has received a diagnosis of Generalized Anxiety Disorder that is temporally remote and has been attributed to military service. His in-service misconduct appears to be consistent with his diagnosed personality disorder, rather than evidence of another mental health condition. 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, "it is my considered clinical opinion there is post-service evidence of a mental health condition attributed to military service. There is insufficient evidence his misconduct could be attributed to a mental health condition, other than his diagnosed personality disorder."

After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. 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 related 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 misconduct was not due to mental health-related conditions or symptoms. 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 record was otherwise so meritorious as to deserve a discharge upgrade. The Board concluded that significant negative aspects of your conduct and/or performance greatly outweighed any positive aspects of your military record. 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. Moreover, 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 there was no impropriety or inequity in your discharge, and even under the liberal consideration standard, the Board concluded 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 an upgraded characterization of service as a matter of clemency or equity. 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,

12/23/2022

