



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: 3432-22
Ref: Signature Date

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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 23 September 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 and your response to the AO.

You enlisted in the Navy and entered active duty on 17 June 1992. Your pre-enlistment physical examination, on 21 July 1991, and self-reported medical history both noted no psychiatric or neurologic conditions or symptoms. On 1 July 1993, you reported for duty on board the USS █ (█) in █.

On 25 February 1994, you received non-judicial punishment (NJP) for unauthorized absence (UA) when you failed to go to your appointed place of duty. You did not appeal your NJP. On 26 May 1994, you received NJP for a failure to obey an order or regulation. You did not appeal

your second NJP. On 10 August 1994, you received NJP for a failure to obey an order or regulation, and for making a false official statement. You did not appeal your third NJP.

On 10 August 1994, 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. In the interim, your commanding officer (CO) recommended that you be separated with an under Other Than Honorable (OTH) conditions characterization of service. In his endorsement, your CO emphatically stated:

██████████ has been a poor Sailor. He has been a severe performance problem since reporting aboard. He has been counseled on numerous occasions by his chain of command in an effort to correct his deficiencies. To no avail. It now takes more man hours of effort to get work out of ██████████ than the man hours of real work he produces. ██████████ has been to CO's mast on three occasions. First time was for failing to report to his place of duty. The second case was for failing to obey an order. The final time was failing to obey an order and falsifying official documents by lying about his age while applying for an ID. He was found guilty in all cases. ██████████ poor performance demonstrates unreliability, inability to take orders, and a lack of integrity. These traits are unacceptable in the naval service and ██████████ should be discharged with an other than honorable characterization.

Ultimately, on 26 September 1994, you were discharged from the Navy for a pattern of misconduct with an OTH discharge characterization and assigned an RE-4 reentry code.

On 11 January 1999, the Naval Discharge Review Board denied your application for relief and determined that your discharge was proper as issued and no change was warranted.

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 advancement to Petty Officer. Additionally, the Board considered your contentions that: (a) the incidents that happened to you onboard the USS ██████████ should not be tolerated and shouldn't happen to any person that volunteers to serve their country, (b) you were the subject of racial slurs, abuse, and were sexually assaulted, (c) your ID application form contained a simple clerical error and you did not make a false official statement, and (d) it was your intention when you entered the Delayed Entry Program to make a career out of the military as most of your family members did, but because of your assault and harassment you never completed that goal. For purposes of clemency consideration, the Board noted you provided advocacy letters but no supporting documentation describing post-service accomplishments.

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 25 July 2022. The Ph.D. stated in pertinent part:

During his military service, the Petitioner was evaluated by the medical officer but received no formal diagnosis. This was based on the clinical history provided by the Petitioner, his clinical presentation, and his mental status evaluation at the time. The Petitioner has provided no medical evidence to support his claims. Unfortunately, his personal statement is lacking sufficient detail to establish a nexus with his misconduct, particularly as he denies some of the misconduct. Additional records (e.g., post-service mental health records describing the Petitioner's diagnosis, symptoms, and their specific link to his misconduct) are required to render an alternate opinion.

The Ph.D. concluded, "it is my considered clinical opinion there is insufficient evidence of a diagnosis of PTSD that may be attributed to military service. There is insufficient evidence his misconduct could be attributed to PTSD."

Based upon this 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 nexus between any purported 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. 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 there was no impropriety or inequity in

your discharge, and the Board concluded that your pattern of misconduct clearly merited your receipt of an OTH. The Board carefully considered your personal statement and any matters submitted regarding your character, post-service conduct (including your statement that you spent 12 years in prison), and personal/professional accomplishments, however, even in light of the Wilkie Memo and reviewing the record holistically, the Board still concluded that insufficient evidence of an error or injustice exists to warrant 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,

9/28/2022

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Executive Director

Signed by: █