



**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: 3469-22

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 5 August 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) furnished by a qualified mental health provider and your response to the AO.

You enlisted in the Navy and entered active duty on 24 November 1992. Your pre-enlistment physical examination, on 30 October 1992, and self-reported medical history both noted no psychiatric or neurologic conditions or symptoms.

On 2 April 1993, you were arrested by civilian authorities in █ on suspicion of rape/sexual assault of a 16-year-old victim at a local hotel. On 1 June 1993, you received non-

judicial punishment (NJP) for two separate specifications of failing to obey a lawful order. You did not appeal your NJP.

On 12 July 1993, you underwent a psychological evaluation. The Navy Medical Officer (NMO) diagnosed you with a personality disorder not otherwise specified with narcissistic and antisocial personality traits (primary)(severe). The NMO strongly recommended your expeditious administrative separation based on your personality disorder of such severity rendering you incapable of further adequate naval service. The NMO determined that you were not mentally ill, but that your maladaptive pattern of thinking, behaving, and relating could pose a continuing risk of harm to yourself or others. The NMO also determined that you were fully responsible for yourself and your actions, and that you did not possess a severe mental disease or defect and were considered competent.

On 13 July 1993, your command notified you that you were being processed for an administrative discharge by reason of misconduct due to the commission of a serious offense, misconduct involving sexual behavior that deviated from socially acceptable standards of morality and decency, and due to a personality disorder. You waived your rights to consult with counsel, to include written rebuttal statements, and to request an administrative separation board. In the interim, on 15 July 1993, your separation physical examination noted your personality disorder diagnosis but did not endorse any neurologic conditions or symptoms. Ultimately, on 26 August 1993, you were separated from the Navy for misconduct due to the commission of a serious offense with an Other Than Honorable (OTH) discharge characterization 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 an discharge upgrade and change to your narrative reason for separation. In addition, the Board considered your contentions that: (a) you were suffering from undiagnosed schizophrenia at the time of the incident leading to your discharge, (b) you were wrongly diagnosed with a personality disorder at the time, and (c) but for your extreme mental health condition you would not have committed the acts you did in April 1993. 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 AO dated 17 June 2022. The Ph.D. stated in pertinent part:

During military service, the Petitioner was diagnosed with a personality disorder. This 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 in service. Post-service,

he has received a diagnosis of Schizoaffective Disorder that is temporally remote to his military service, which civilian clinicians have attributed to military service. While it is possible that mental health symptoms initially categorized as personality symptoms could be conceptualized as Schizoaffective Disorder post-service, there is insufficient evidence to establish a nexus with his misconduct. When evaluated in service, there was no evidence of psychosis, and the Petitioner's statement regarding the rape indicated an awareness of right and wrong and responsibility for his actions, as he stated that he thought that the victim was 18 and expressed concern regarding potentially contracting a sexually transmitted infection.

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

In response to the AO, you provided additional medical evidence that argued your actions in 1993 were due to an undiagnosed mental illness.

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 NJP and civilian arrest, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and discrediting effect your arrest had on the Navy. Further, in accordance with the Kurta, Hagel, 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, notwithstanding your rebuttal arguments, the Board concurred with the AO and concluded that 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 misconduct that formed the basis of your discharge. The Board also concluded that although you have post-discharge mental health diagnoses, 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, even under the liberal consideration standard the Board concluded that your misconduct was not due to mental health-related conditions or 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 serious 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. Moreover, the Board concluded that your behavior/misconduct would not be excused or mitigated by mental health conditions even with liberal consideration. The Board also concluded that the evidence of record did not demonstrate that you were not mentally responsible for your conduct or that you should otherwise not be held accountable for your actions.

Additionally, 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 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 or employment opportunities. As a result, the Board determined that there was no impropriety or inequity in your discharge, and 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 still concluded that insufficient evidence of an error or injustice exists to warrants upgrading your characterization of service, changing your narrative reason for separation, or granting clemency in your case. 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,

8/12/2022

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Executive Director

Signed by: █