



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

█
Docket No: 4628-22
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 7 October 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) from a qualified mental health provider and your response to the AO.

The Board determined that your personal appearance, with or without counsel, would not materially add to their understanding of the issues involved. Therefore, the Board determined that a personal appearance was not necessary and considered your case based on the evidence of record.

You enlisted in the Navy at age nineteen and entered active duty on 24 February 1983. Your pre-enlistment physical examination, on 24 February 1983, and self-reported medical history both noted no psychiatric or neurologic conditions or symptoms. Your submarine duty physical examination, on 31 May 1983, and self-reported medical history both noted no psychiatric or neurologic conditions or symptoms.

On 17 May 1984, you received non-judicial punishment (NJP) for unauthorized absence (UA) lasting one day. You did not appeal your NJP. On 26 July 1984, your command issued you a "Page 13" counseling warning (Page 13) documenting your UA from a muster. The Page 13 expressly advised you that any further deficiencies in performance and/or conduct may result in disciplinary action and in processing for administrative discharge. You refused to sign and acknowledge the Page 13, and also did not submit a Page 13 rebuttal statement.

On 4 September 1984, you commenced a period of UA that terminated after twenty-four days with your surrender to military authorities on 28 September 1984. While in a UA status, you missed ship's movement on 11 September 1984. On 10 October 1984, you received NJP for your UA. You did not appeal your NJP.

On 21 November 1984, you received NJP for five separate UA specifications for missing muster. You did not appeal your NJP. On 28 November 1984, you received NJP for the wrongful use of a controlled substance (marijuana). You did not appeal your fourth NJP.

On 19 December 1984, you commenced a period of UA that terminated after twenty-eight days with your surrender on 16 January 1985. On 26 February 1985, you received NJP for UA, and for drinking alcohol while in a restricted status. You did not appeal your fifth NJP. On 16 April 1985, you commenced a period of UA that terminated after twenty-six days with your surrender on 12 May 1985.

On 24 May 1985, you were convicted at a Special Court-Martial (SPCM) for UA, and for the wrongful use of a controlled substance (marijuana) and the wrongful introduction of marijuana onto the █ (█). You received as punishment confinement at hard labor for four months and a discharge from the Navy with a Bad Conduct Discharge (BCD). In the interim, on 13 June 1985, you waived clemency review by the Naval Clemency and Parole Board. Your separation physical examination, on 24 June 1985, and self-reported medical history both noted no psychiatric or neurologic conditions or symptoms.

On 19 July 1985, the Convening Authority approved your SPCM sentence, but suspended any confinement in excess of seventy-five days. The Navy-Marine Corps Court of Military Review affirmed the SPCM findings and sentence. Upon the completion of appellate review in your case, on 7 April 1986, a Supplemental SPCM Order directed the execution of your BCD. Ultimately, on 7 April 1986, you were discharged from the Navy with a BCD and assigned an RE-4 reentry code.

On 6 February 2013, this Board denied your initial petition for relief.

The Board carefully considered all potentially mitigating factors to determine whether the interests of justice warrant relief in your case in accordance with the Hagel, Kurta, and Wilkie Memos. These included, but were not limited to, your desire for a discharge upgrade and changes to your narrative reason for separation along with contentions that: (a) your youthful indiscretion and mental health issues contributed to the misconduct leading to your BCD, (b) post-service you have fully rehabilitated yourself, (c) you have established a loving family, addressed mental health issues, advanced your education, furthered your career, served other veteran, and selflessly given back to your community, and (d) it would be an injustice to continue being punished for actions largely influenced by youthful indiscretion and mental health issues. For purposes of clemency consideration, the Board noted you provided supporting documentation describing post-service accomplishments but no advocacy letters.

As part of the Board review process for your current petition, the BCNR Physician Advisor who is a licensed clinical psychologist (Ph.D.), reviewed your contentions and the available records and issued an AO dated 26 August 2022. The Ph.D. stated in pertinent part:

Petitioner was appropriately referred for psychological evaluation during his enlistment and properly evaluated during an inpatient hospitalization. His personality disorder diagnosis was based on observed behaviors and performance during his period of service, the information he chose to disclose, and the psychological evaluation performed by the mental health clinician. A personality disorder diagnosis is pre-existing to military service, and by definition, is neither incurred in nor aggravated by military service. Unfortunately, he has provided no medical evidence of an error in diagnosis or other mental health condition. His misconduct appears to be consistent with his diagnosed personality disorder, rather than evidence of another mental health condition incurred in or exacerbated by military service. 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 insufficient evidence of a mental health condition that may be attributed to military service. There is insufficient evidence his misconduct may be attributed to a mental health condition, other than his diagnosed personality disorder."

In response to the AO, you provided additional arguments in support of your application.

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 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 SPCM misconduct that formed the basis of your discharge. As a result, the Board concluded that your misconduct was not due to mental health-related 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 pattern of 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. The Board also noted that the evidence of record did not demonstrate 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. Additionally, absent a material error or injustice, the Board declined to summarily upgrade a discharge solely for the purpose of facilitating certain veterans' status or benefits, or enhancing educational or employment opportunities. Accordingly, the Board determined that there was no impropriety or inequity in your discharge, and even under the liberal consideration standard for mental health conditions, the Board concluded that your serious misconduct and disregard for good order and discipline clearly merited your receipt of a BCD.

The Board also noted that, although it cannot set aside a conviction, it might grant clemency in the form of changing a characterization of discharge, even one awarded by a court-martial. However, the Board concluded that despite your contentions this is not a case warranting any clemency. You were properly convicted at a SPCM of serious misconduct including drug-related offenses, and the Board did not find any evidence of an error or injustice in this application that warrants upgrading your BCD. The simple fact remains is that you also left the Navy while you were still contractually obligated to serve on three separate occasions totaling approximately 78 days, and you went into a UA status each time without any legal justification or excuse. The Board carefully considered any matters submitted regarding your character, your sincere contrition, post-service conduct, 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, 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



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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,

10/12/2022

