



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: 4684-22

Ref: Signature Date

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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 also considered an advisory opinion (AO) furnished by 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 and entered active duty on 26 June 1990. Your pre-enlistment physical examination, on 18 January 1990, and self-reported medical history both noted no psychiatric or neurologic conditions or symptoms. On 15 March 1990, you signed and

acknowledged the Navy “Drug and Alcohol Abuse Statement of Understanding.” On 6 January 1991, you reported for duty on board █.

On 10 March 1992, your command issued you a “Page 13” counseling warning (Page 13) documenting your deficient performance involving unauthorized absence (UA). The Page 13 expressly warned you that any further deficiencies in performance and/or conduct may result in disciplinary action and in processing for administrative separation. You did not submit a Page 13 rebuttal statement.

On 14 May 1992, you received non-judicial punishment (NJP) for the wrongful use of a controlled substance (cocaine). You did not appeal your NJP.

On 14 May 1992, your command notified you that you were being processed for an administrative discharge by reason of misconduct due to drug abuse. You expressly waived your rights to consult with counsel, submit statements for consideration by the Separation Authority, and to request an administrative separation board. On the same day, you underwent a drug dependency evaluation and were determined to be both alcohol and cocaine dependent. The evaluating medical officer recommended Level III inpatient treatment upon your discharge.

In the interim, your separation physical examination, on 2 June 1992, and self-reported medical history both noted no psychiatric or neurologic conditions or symptoms. Ultimately, on 26 June 1992, you were discharged from the Navy for misconduct due to drug abuse with an Other Than Honorable (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, your desire for a discharge upgrade and disability benefits. In addition, the Board considered your contentions that: (a) you willingly joined the United States Navy to proudly serve your beloved country, and without hesitation deployed to Desert Storm and followed all orders and assignments from my superior officers to the best of your ability and unfortunately this caused something to happen, (b) you knew that there was something not right, however, during this period of time things like PTSD were not discussed and if anything to do with mental health in general was discussed it was a taboo and a sign of weakness or a cowardly act, (c) you never struggled or got into trouble with law enforcement until after coming home from █, (d) you finally found the courage to speak openly about the things that haunted you on active duty, (e) you became ill while defending your country and you feel your country let you down for all these years when you needed it the most, (f) in spite of this you still love your country and fly the highest and largest American flag on your street. 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 19 August 2022. The Ph.D. stated in pertinent part:

During military service, he was diagnosed with alcohol and substance use disorders. Problematic alcohol and substance use are incompatible with military readiness and discipline and considered amenable to treatment, depending on the willingness of the individual. Post-service, he has provided evidence of a diagnosis of PTSD that is temporally remote to military service and does not appear to be related. Unfortunately, his personal statement and available records are insufficiently detailed to establish a nexus with his military service, particularly given his denial of symptoms upon separation. Additional records (e.g., post-service mental health records describing the Petitioner's diagnosis, symptoms, and their specific link to his misconduct) may aid in rendering 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."

In response to the AO, you provided additional information regarding the circumstances of your case along with 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 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 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.

Regarding your contention that you should have all Department of Veterans Affairs (VA) benefits available to you upon your discharge reinstated, whether or not you are eligible for certain VA benefits is a matter under the cognizance of the VA and not this Board, and you should contact the nearest VA office concerning your right and eligibility to apply for certain benefits. The VA conducts its own determination of eligibility based on service records and input from an applicant upon their request. If you have been subsequently denied benefits by the VA, you should appeal such denial under procedures established by the VA. Additionally, you should refer to the VA website (<http://www.va.gov/service-member-benefits/>) for additional assistance regarding a benefit determination review.

The Board observed that character of military service is based, in part, on conduct and overall trait averages which are computed from marks assigned during periodic evaluations. Your overall active duty trait average calculated from your available performance evaluations during your enlistment was approximately 2.8 in conduct. Navy regulations in place at the time of your discharge required a minimum trait average of 3.0 in conduct (proper military behavior), for a fully Honorable characterization of service. The Board concluded that your conduct marks during your active duty career were a direct result of your serious misconduct which further justified your OTH characterization of discharge.

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 noted that, although one's service is generally characterized at the time of discharge based on performance and conduct throughout the entire enlistment, the conduct or performance of duty reflected by only a single incident of misconduct may provide the underlying basis for discharge characterization. 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 VA benefits, or enhancing educational, employment, or military enlistment opportunities. Lastly, the Board determined that illegal drug use by a Sailor is contrary to Navy core values and policy, renders such Sailors unfit for duty, and poses an unnecessary risk to the safety of their fellow Sailors. 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 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.

Given that the Board is denying your discharge upgrade request, the Board also declined to change your narrative reason for separation to a disability-related reason. In making this finding, the Board noted that, even if there was evidence that you suffered from an unfitting disability condition, you were ineligible for military disability processing and related benefits due to your misconduct based discharge that resulted in an OTH characterization of service. Ultimately, the Board determined that you were properly processed for separation based on evidence of your misconduct. 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,

10/12/2022

[REDACTED]

Executive Director

Signed by: [REDACTED]