



**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: 4733-22

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 4 November 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 the advisory opinion (AO) furnished by a qualified mental health provider, which was previously provided to you. Although you were afforded an opportunity to submit an AO rebuttal, you chose not to do so.

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 on 3 June 1991. Your pre-enlistment physical examination, on 30 August 1990, and self-reported medical history both noted no neurologic or psychiatric conditions or symptoms.

On 7 December 1992, your command issued you a "Page 13" counselling sheet (Page 13) documenting your failure to meet physical readiness standards and enrollment in the Command's Physical Readiness Training Program. On 9 February 1993, you received non-judicial punishment (NJP) for two separate specifications of unauthorized absence (UA). You did not appeal your NJP. On the same day, your command issued you a Page 13 documenting the NJP. The Page 13 expressly warned you that any further deficiencies in your performance and/or conduct may result in disciplinary action and in processing for administrative separation. You did not elect to submit a Page 13 rebuttal statement.

On 14 February 1993, you commenced a period of UA. Your UA terminated after four days, on 18 February 1993, with your surrender to military authorities. On 9 March 1993, you commenced another UA. On 9 April 1993, your command declared you to be a deserter. Your UA terminated after thirty-four days, on 12 April 1993, with your surrender to military authorities.

On 28 May 1993, you were convicted at a Summary Court-Martial (SCM) of two separate UA specifications totaling thirty-eight days. You were sentenced to confinement for twenty-five days, forfeitures of pay, and a reduction in rank to the lowest enlisted paygrade (E-1). On 1 June 1993, the Convening Authority approved the SCM sentence.

On 26 June 1993, your command notified you that were being processed for an administrative discharge by reason of misconduct due to the commission of a serious offense. You waived your rights to consult with counsel, and to request an administrative separation board. In the interim, your separation physical examination, on 28 June 1993, and self-reported medical history both noted no neurologic or psychiatric conditions or symptoms. Ultimately, on 12 July 1993, you were discharged from the Navy for misconduct with an under other than honorable conditions (OTH) discharge and assigned an RE-4 reentry code.

The Board carefully considered all potentially mitigating factors to determine whether the interests of justice warranted relief in your case in accordance with the Hagel, Kurta, and Wilkie Memos. These included, but were not limited to, your desire for discharge upgrade and contentions that: (a) the correction should be made due to the traumatic stress of the Persian Gulf War, your guardian's death, and for not taking sufficient time to properly make a life changing decision with my head not my heart, and (b) your traumatic stress disorders lead you to life-altering decisions which in turn lead you into prison for over twenty-one years. For purposes of clemency and equity 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 2 September 2022. The Ph.D. stated in pertinent part:

During military service, he was diagnosed with an alcohol use disorder. Problematic alcohol use is incompatible with military readiness and discipline, and considered amenable to treatment, depending on the individual's willingness. There is no evidence of a diagnosis of PTSD, and he has provided no medical evidence in support of his claims. There is no evidence he was unaware of his misconduct or not responsible for his behavior. Unfortunately, his personal statement is not sufficiently detailed to establish clinical symptoms or provide a nexus with his misconduct. 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 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 convincing evidence you suffered from any type of mental health condition while on active duty other than an alcohol use disorder, or that any such mental health conditions or symptoms were related to or 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, the Board observed that you did not submit any clinical documentation or treatment records to support your mental health claims despite a request from BCNR on 30 June 2022 to specifically provide additional documentary material. The Board unequivocally determined the record clearly reflected that your misconduct was willful and intentional and demonstrated you were unfit for further service. 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.

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 2.3 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.

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 generally warranted for misconduct and 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. The simple fact remains is that you left the Navy while you were still contractually obligated to serve and you went into a UA status multiple times without any legal justification or excuse. 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 even under the liberal consideration standard, the Board concluded that your serious misconduct clearly merited your receipt of an OTH characterization and that your separation was in accordance with all Department of the Navy directives and policy at the time of your discharge. 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,

11/9/2022

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Executive Director

Signed by: █