



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

█  
Docket No: 5374-22

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 also considered an advisory opinion (AO) furnished by qualified mental health provider. Although you were afforded an opportunity to submit an AO rebuttal for consideration, you chose not to do so.

You enlisted in the Navy and entered active duty on 27 August 1998. Your pre-enlistment physical examination, on 21 July 1998, and self-reported medical history both noted no neurologic conditions or symptoms.

On 18 March 1999, you received non-judicial punishment (NJP) for four separate specifications of unauthorized absence (UA), and for the failure to obey a lawful order. You appealed your

NJP. On 30 August 1999, you received NJP for insubordinate conduct. You did not appeal your NJP.

On 27 January 2000, you received NJP for obtaining services under false pretenses. You did not appeal your NJP. On the same day, your command issued you a "Page 13" counseling warning (Page 13) documenting your cumulative NJP offenses. The Page 13 expressly warned you that any further deficiencies in performance and/or conduct may result in disciplinary action and processing for separation. You did not submit a Page 13 rebuttal statement.

On 29 February 2000, you received NJP for larceny and wrongful appropriation. You did not appeal your NJP.

On 8 March 2000, you underwent a psychiatric/mental health evaluation at Naval Hospital █. You were diagnosed with alcohol dependence, adjustment disorder with mixed disturbance of emotion and conduct, and personality disorder not otherwise specified with anti-social and borderline features. Following your evaluation, on 13 March 2000, a Navy Medical Officer recommended your administrative separation.

On 16 March 2000, you were convicted at a Summary Court-Martial of two separate UA specifications, willfully disobeying a superior commissioned officer, insubordinate conduct, and two specifications of dishonorably failing to pay just debts. As punishment, you were sentenced to confinement for thirty days.

On 27 March 2000, your command notified you that you were being processed for an administrative discharge by reason of misconduct due to a pattern of misconduct and commission of a serious offense. You elected to waive your rights to consult with counsel, submit statements on your own behalf, and to request an administrative separation board. In the interim, on 28 March 2000, you waived a drug/alcohol dependency screening. On 29 March 2000, your separation physical examination did not endorse any neurologic or psychiatric conditions or symptoms. Ultimately, on 18 April 2000, you were discharged from the Navy for misconduct with an under Other Than Honorable (OTH) conditions 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 contentions that: (a) the events surrounding your OTH discharge were related to misdiagnosed and untreated mental health issues that were exacerbated by a previously undiagnosed mental health condition, all of which were made worse by your time in the service, (b) the mental health department recommended you receive an administrative discharge, but the command ignored the licensed psychiatrist's separation recommendation, (c) over the past twenty-two years your discharge characterization has been a black mark on your life and a source of shame that has worsened your mental health conditions, (d) with a discharge upgrade you will finally be able to receive the help and assistance you desperately need, and (e) you enlisted in the Army National Guard and received an Honorable discharge after two years of successful service. 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 23 August 2022. The Ph.D. stated in pertinent part:

During military service, the Petitioner was diagnosed with several mental health conditions. Post-service, he has been diagnosed with PTSD that has been attributed in part to military service. It is possible that the adjustment disorder identified during military service has been re-conceptualized as PTSD with additional information post-service. Unfortunately, his personal statement and available records are not sufficiently detailed to establish a nexus with all of his misconduct. While UA could be attributed to unrecognized symptoms of PTSD, other misconduct, including insubordination, disobedience, larceny, false pretenses, and failure to pay debts seems to be more consistent with the characterological traits identified during military service. Additional records (e.g., 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 post-service evidence of a diagnosis of PTSD that may be attributed to military service. There is evidence of other mental health conditions that may be attributed to military service. There is insufficient evidence that all of his misconduct may be attributed to PTSD or another mental health condition, other than his in-service diagnosed personality disorder."

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 all of 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 the overwhelming majority 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 you did not provide sufficient evidence to support your contention that you served with the Army National Guard (ANG), which could easily be established by the ANG



equivalent of a DD Form 214. Notwithstanding, the Board determined that if your ANG service was as successful as you contend, your diagnosed mental health conditions were not of such severity as to impair your ability to adequately perform in a military occupational setting.

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 1.0 in conduct. Navy regulations in place at the time of your discharge required a minimum trait average of 2.0 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 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 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 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. 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,

10/14/2022

