



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. 6268-22
1442-21
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 limitations 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 9 January 2023. 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 service 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)/mental health condition (MHC) (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). The Board also considered an advisory opinion (AO) from a qualified mental health professional. Although you were provided the opportunity to respond to this AO, 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 previously applied to this Board for an upgrade to your characterization of service. You were denied relief on 13 September 2021.

You enlisted in the United States Navy and commenced a period of service on 2 April 1992. On 27 May 1993, you received non-judicial punishment (NJP) for violation of Uniform Code of Military Justice (UCMJ) Article 92, three specifications of failing to obey a lawful order by wearing an earring on two occasions and consuming alcohol in an unauthorized area. On 20 September 1993, you were found guilty at your second NJP for violating UCMJ Article 116, for breach of the peace. On 23 December 1993, you were found guilty at your third NJP for violating UCMJ Article 128, for assaulting a civilian. You did not appeal any of these NJPs.

On 22 June 1994, you were evaluated by a medical professional and diagnosed with a personality disorder. The physician noted that you were “not considered mentally ill, rather, manifesting a longstanding disorder of character and behavior which is of such a severity as to render [you] incapable of serving adequately in the Navy.”

On 7 July 1994, you were found guilty at your fourth NJP for violating UCMJ Article 86, for a two day period of unauthorized absence, Article 92, for consuming alcohol while in a duty status, and Article 128, for assaulting a petty officer. You did not appeal this NJP. Over the course of your service, you were given eight administrative counselings addressing deficiencies in your performance and conduct.

On 15 July 1994, you were notified of the initiation of administrative separation processing and your rights in connection therewith. You elected your right to representation by qualified counsel and to present your case at an administrative board. On 14 September 1994, the administrative board found that you committed a serious offense, committed a pattern of misconduct, and that you had a personality disorder. By a vote of 3 to 0, the administrative board voted that you should be discharged with an Other Than Honorable (OTH) characterization of service.

As a result, you were discharged from the Navy, on 25 January 1995, with an Other than Honorable (OTH) characterization of service by reason of misconduct due to pattern of misconduct and assigned an RE- 4 reentry code.

The Board carefully considered all potentially mitigating and/or extenuating 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: (a) your desire to upgrade your characterization of service, (b) your contention that you were suffering from undiagnosed mental health conditions while in service, and (c) the impact that your mental health had on your conduct. In your petition you contend that you were suffering from undiagnosed “mental illness and bipolar depression” while serving on active duty, which contributed to your misconduct. For purposes of clemency and equity consideration, and in support of your petition, you provided November 2018 medical records listing diagnoses of Bipolar Disorder, unspecified (BD); Generalized Anxiety Disorder (GAD); and Alcohol Use Disorder, Mild, In controlled environment (AUD). You also provided a June 2019 questionnaire listing November 2014 as the “earliest date that the description of symptoms and limitations ...applies” for BD and GAD. In your previous BCNR petition, you also included medical records from a February 2016 psychiatric hospitalization in which you were diagnosed with Antisocial Personality Disorder, Mood Disorder (unspecified) and Impulse Control Disorder (unspecified).

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 31 October 2022. The Ph.D. noted in pertinent part:

Petitioner was appropriately referred for psychological evaluation during his enlistment and properly evaluated. 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 by definition, and indicates lifelong characterological traits unsuitable for military service. Post-service, he has provided evidence of other mental health conditions that are temporally remote to his military service. There is no evidence of a diagnosis of PTSD. His in-service 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., mental health records describing the Petitioner's 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 or another mental health condition that may be attributed to military service. There is insufficient evidence his misconduct could be attributed to PTSD or another mental health condition, other than his diagnosed personality disorder."

After thorough review, the Board concluded the potentially mitigating factors were insufficient to warrant relief. The Board determined that your misconduct, as evidenced by your four NJPs and eight administrative counseling warnings, outweighed these mitigating factors. In accordance with the Kurta, Hagel, and Wilkie Memos, the Board gave liberal and special consideration to your record of service, your mental health during service, your post-service diagnoses, and your post-service accomplishments. The Board considered the seriousness of your repeated misconduct and the fact that it involved you committing assault on two separate occasions. Further, the Board also considered the likely negative impact your conduct had on the good order and discipline of your command. The Board determined that your conduct was contrary to Navy core values and policy, and was detrimental to mission success.

In making this determination, the Board concurred with the advisory opinion that the evidence of your post-service mental health conditions are temporally remote to your military service and that there is no evidence of a diagnosis of PTSD. Your in-service 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. As noted by the physician you evaluated you on 22 June 1994, you were "not considered mentally ill." Unlike a diagnosed mental health condition, a personality disorder diagnosis is pre-existing to military service by definition, and indicates lifelong characterological traits that render a service member unsuitable for continued military service. The Board felt that your active duty misconduct was intentional and willful and demonstrated you were unfit for further service. As a result, the Board determined your conduct constituted a significant departure from that expected of a Sailor and continues to warrant an OTH characterization of service.

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. While the Board commends your post-discharge accomplishments and good character, 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 granting you the relief you requested or granting relief as a matter of clemency or equity. Ultimately, the Board concluded the mitigation evidence you provided was insufficient to outweigh the seriousness 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,

1/19/2023

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Executive Director
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