



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

█  
Docket No: 6619-22

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 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 19 December 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 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 and your response to the AO.

You enlisted in the United States Navy and commenced a period of service on 21 November 1997. On 7 January 1999, you received non-judicial punishment (NJP) for violation of Uniform Code of Military Justice (UCMJ) Article 91, two specifications of failing to obey a lawful order, Article 117, for the wrongful use of provoking words, and Article 134, for two instances of communicating a threat. In connection with the NJP, you stated "Navy life is not for me and...I'm stressing [at sea]...I want help with stress management." You were administratively counseled and put on notice that further deficiencies in your performance or conduct could result in administrative or disciplinary measures. On 9 September 1999, you were found guilty at your second NJP for violating the exact same UCMJ Articles. The Investigating Officer expressed the

opinion that you were dealing with “personal issues that clouded [your] judgement and misinterpreted what/how...[your superior directed you] to carry out required duties...[you were] very dissatisfied about being separated from [your] wife.” You did not appeal either of the NJPs.

On 18 September 1999, you were hospitalized overnight for suicidal ideations. You were diagnosed with an Adjustment Disorder with mixed emotional features. Major Depressive Disorder was “ruled out” with further evaluation and personality traits were noted, with a “likely personality disorder, mixed” diagnosis. At the time of discharge, you were diagnosed with “Acute Stress associated with work environment/family separation and lack of social support systems resolved with discussion of separation from Navy.” You were returned to duty with instructions to return to the medical clinic as needed.

On 27 September 1999, you were notified that you were being processed for an administrative discharge by reason of misconduct due to pattern of misconduct and commission of a serious offense. You waived your right to consult with qualified counsel and your right to present your case at an administrative separation board. You were discharged from the Navy, on 4 November 1999, 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, change your narrative reason for separation, and change your reentry code, (b) your contention that you were diagnosed with mental health conditions in service, to include MDD, and (c) the impact that your mental health had on your conduct. For purposes of clemency and equity consideration, the Board noted that you provided documentation related to your post-service accomplishments and character.

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 17 November 2022. The Ph.D. noted in pertinent part:

Petitioner was appropriately referred for psychological evaluation during his enlistment and properly evaluated during an overnight inpatient hospitalization. His Acute Stress diagnosis was based on observed behaviors and performance during his period of service, the information he chose to disclose, and the psychological evaluation performed. An Acute Stress diagnosis indicates an acute development of symptoms in response to a traumatic stressor, which symptoms last from three days to one month. Records indicate the Petitioner’s symptoms resolved following the hospitalization, which is supported by the absence of post-service evidence of on-going mental health symptoms. While he did report some symptoms of stress prior to his hospitalization, the records indicates these symptoms were not sufficiently interfering to require evaluation or treatment. There is insufficient evidence to attribute his misconduct to a mental health condition, given the timeframe. As he was returned to duty following the hospitalization, the evidence indicates he was aware of his misconduct and responsible for his behavior. 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 insufficient evidence of a diagnosis of PTSD that may be attributed to military service. There is evidence of a mental health condition (Acute Stress) that may be attributed to military service. There is insufficient evidence his misconduct could be attributed to PTSD or another mental health condition."

On 2 December 2022, you replied to the AO and argued that the Major Depressive Disorder (MDD) was never ruled out, and highlighted that you still reported feeling depressed on your separation physical. You again assert that the misconduct was caused by your mental health issues. After review of your response, the AO's unfavorable opinion remained unchanged. The AO highlights that although the admitting physician listed the diagnosis as "suicidal ideation with major depression secondary to environmental stressors," the Senior Medical Officer SMO did not diagnose depression, but rather assessed the admitting diagnosis to be an Adjustment Disorder with mixed emotional features. Upon discharge from the hospital, the physician listed the discharge diagnosis as "Acute Stress associated with work environment/ family separation and lack of social support." The AO explains that mental health diagnoses listed at discharge are the diagnoses based on the greatest amount of clinical data and, as such, provide the most accurate clinical picture and the best evidence of the mental health picture at that time. No diagnosis of MDD is listed on his hospital discharge record, indicating that MDD was not the most accurate diagnostic description. The AO also noted that no new medical evidence was provided in response to the AO and that no post-service medical evidence was submitted in support of the petition for relief.

After thorough review, the Board concluded the potentially mitigating factors were insufficient to warrant relief. While the Board commends you on your post-service accomplishments, the Board felt that your misconduct, as evidenced by your two NJPs, 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, the stressful events occurring your life that impacted your mental health during service, and your post-service accomplishments. The Board considered the seriousness of your repeated misconduct and the fact that it involved threatening fellow shipmates. 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.

In making this determination, the Board concurred with the advisory opinion that while there is evidence of a mental health condition (Acute Stress) that may be attributed to military service, there is insufficient evidence of a diagnosis of PTSD or MDD that may be attributed to military service. An Acute Stress diagnosis is in response to a traumatic stressor, producing symptoms which are short term and last mere days. Records indicate that your symptoms resolved following the hospitalization. This diagnosis is further supported by the absence of post-service evidence of on-going mental health symptoms. The Board also agreed with the AO that there is insufficient evidence that your misconduct could be attributed to PTSD, MDD, or another mental health condition, given the timeframe. While you reported some symptoms of stress prior to your hospitalization, the records indicates these symptoms were not sufficiently interfering to require your evaluation or treatment. As you were returned to duty following the hospitalization,

the evidence indicates that you were aware of your misconduct and responsible for your behavior. 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, misconduct narrative reason for separation, and a RE-4 reenlistment code. While the Board carefully considered the evidence you provided as mitigation evidence, 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, changing to your narrative reason for separation, changing your reenlistment code, or granting relief 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,

1/13/2023

