



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

█  
Docket No. 6786-22

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 11 December 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 and your response dated 28 November 2023.

You enlisted in the United States Navy and commenced a period of service on 15 November 1994. During your pre-enlistment physical, there was no documented history psychiatric illness, substance abuse, or head trauma and you were deemed physically qualified for enlistment.

On 3 January 1995, you were seen by Emergency Medicine after falling down stairs due to fainting/syncopal episode resulting in reported transient loss of consciousness and a head contusion. On 7 September 1995, you were diagnosed with Post-Concussion Syndrome. On 14 May 1997, after following up with Cardiology, you were diagnosed with Neurocardiac

Syncope, a temporary loss of consciousness caused by fall in blood pressure. Over the course of your service, you received medical treatment on numerous occasions related to syncope episodes.

On 6 June 1996, you received non-judicial punishment (NJP) for violation of Uniform Code of Military Justice (UCMJ) Article 86, for two periods of unauthorized absence (UA). You did not appeal this NJP. On 21 July 1998, your medical record was reviewed by the Physical Evaluation Board due to your syncope issues and you were found fit to perform the duties of your office, grade, and rank on active duty.

On 26 October 1998, you were found guilty at Special Court Martial (SPCM) violating UCMJ Article 86, for three specifications of UA totaling 105 days. You were sentenced to a Bad Conduct Discharge (BCD), confinement, and reduction in rank to E-1. You were subsequently placed on appellate leave while your case was reviewed by the Navy and Marine Corps Court of Criminal Appeals (NMCCA). After thorough review, NMCCA found no error in law or fact and, on 14 December 1999, you were discharged from the Navy with a BCD as adjudged by the court 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 assertion that you were struggling with undiagnosed mental health conditions during your service, and (c) the impact that your mental health had on your conduct. For purposes of clemency and equity consideration, the Board noted you provided evidence of your post-service accomplishments.

In your request for relief, you contend that you were suffering from extreme emotional distress during your time in service, which has been diagnosed post-service as TBI, PTSD, Post-concussive syndrome, and depression. You explain that although some of your medical issues were raised during your trial (such as the syncope episodes), the mental health condition diagnoses were not made until post-service. To establish a nexus to your misconduct, among other things, you offered medical evidence that states that it is “more than likely [your] present medical and psychological issues are related to these issues that started while in the service.” As part of the Board review process, the BCNR Physician Advisor who is a licensed psychiatrist, reviewed your contentions and the available records and issued an AO dated 24 October 2023. The AO noted in pertinent part:

Petitioner’s available in-service personnel and medical records documented multiple head injuries from syncope related falls, and a significant head injury with loss of consciousness from a football-related incident with in-service diagnoses of concussion, cerebral contusion, Mild Closed Head Injury, and Post-Concussion Syndrome with residual symptoms of headaches, memory impairment, concentration difficulties, distractibility, photophobia, and intermittent anxiety/depressive symptoms supportive of Petitioner’s contention of

TBI/Post-Concussion Syndrome. His in-service record did not contain a diagnosis of Major Depression or PTSD or signs/symptoms indicative of a diagnosis of PTSD or Major Depression. Petitioner was diagnosed with Chronic Nausea and Vomiting resulting in a referral to the PEB, which found him Fit for Duty and returned him to continued military service. He was also referred to the PEB for Neurocardiac Syncope (which comprised the bulk of his in-service medical record citations due to multiple hospitalizations and syncopal episodes), but was found FIT for duty and returned to continuing service. Post-discharge, he presented evidence of diagnoses of PTSD, TBI, and Major Depression with increasing debilitation. The post-discharge evidence supported his contention of TBI originating in service. The post-discharge evidence attributed his diagnoses of PTSD and Major Depression to his military service. However, the only traumatic stressor indicative of PTSD that was reported was the pre-enlistment death of his mother from Emphysema at Petitioner's age 20, after 7 years of his reported responsibility as her caretaker, after which he was blamed for her death. There were no reports of additional in-service PTSD stressors or symptoms/behaviors indicative of PTSD. Regarding a nexus between Petitioner's in-service misconduct of multiple UAs and his medical and psychological conditions, the only linkage in the record was Petitioner's statement where he described himself as being in "extreme emotional distress" during the period of his misconduct, citing undiagnosed PTSD, TBI, Depression, and Post-Concussive Syndrome. In the in-service and post-discharge records, there was no nexus postulated between the misconduct behavior and his diagnosed conditions. 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 AO concluded, "it is my medical opinion that there is sufficient objective evidence to support Petitioner's contention while in service he experienced conditions of Neurocardiac Syncope, TBI, and Post-Concussion Syndrome attributable to military service, but not PTSD or Major Depression. There is post-service evidence from the Petitioner of post-discharge diagnoses of PTSD and Major Depression. The available objective evidence does not support Petitioner's contention that his in-service misconduct was attributable to a medical or mental health condition."

On 28 November 2023, you provided a response to the AO, highlighting the applicable DoD Regulations and their reference to delays in diagnosing PTSD and other mental health conditions. You assert that the AO acknowledged the stress associated with your mother's passing, but failed to note the in-service stressor of falling down stairs while holding your infant daughter. Among other information, you provided a letter from your treating physician for over seven years, who stated that it is "[m]ore than likely, his present medical and psychological issues are related to the issues that started while in the service." The diagnoses included: post-traumatic stress disorder; anxiety disorder; intractable chronic post-traumatic headache; and depression.

The AO's author reviewed and considered your rebuttal arguments and supporting information. He noted that the SPCM transcripts indicated the history of Neurocardiac Syncope, passing out and striking head, and stress caused by your mother's passing, all of which was considered by the Trial Judge in the final verdict and sentencing. The provided information did not provide additional or new clinical information, but primarily reiterated support for change in discharge status to obtain veteran's benefits. Based on the forgoing, the AO remained unchanged.

After thorough review, the Board concluded the potentially mitigating factors were insufficient to warrant relief. In accordance with the Kurta, Hagel, and Wilkie Memos, the Board gave liberal and special consideration to your record of service, and your contentions about undiagnosed mental health issues and the possible adverse impact on your service. Specifically, the Board felt that your misconduct, as evidenced by your NJP and SPCM conviction, outweighed these mitigating factors. The Board considered the seriousness of your misconduct and the likely negative impact that your conduct had on the good order and discipline of your command. The Board determined that such misconduct is contrary to the Navy core values and policy, and places an unnecessary burden on fellow shipmates.

In making this determination, the Board concurred with the advisory opinion that while there is evidence that you suffered from in-service Neurocardiac Syncope, TBI, and Post-Concussion Syndrome, there is no evidence to support in-service PTSD or Major Depression. Your post-service diagnosis does not provide sufficient nexus to your misconduct, and to the extent that your medical issues caused stress and anxiety, it did not rise to the level of a mental health condition. The Board felt that you were receiving comprehensive medical treatment for your diagnosed medical conditions and, had you disclosed mental health symptoms, you would have been treated for those issues as well. On the contrary, your in-service medical record reflects that, on 17 February 1998, you were evaluated by Psychiatry following a syncope episode and was assessed as having no psychiatric diagnosis. The Board found that your active duty 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 otherwise not be held accountable for your actions. The Board felt that you received advice from qualified counsel through the court martial process and were aware of your rights. You never raised the issue mental health issues during the court-martial process and the court was made aware of your in-service diagnoses and the impact that your conditions had on your service. Your case also received full appellate review, and no legal errors were identified. As a result, the Board concluded that your conduct constituted a significant departure from that expected of a Sailor and continues to warrant a BCD, as issued by the court. While the Board carefully considered the evidence you submitted in mitigation, even in light of the Kurta, Hagel, and Wilkie Memos and reviewing the record liberally and 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,

12/19/2023

