



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

█
Docket No: 6794-22

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 16 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 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 considered an Advisory Opinion (AO) from a qualified mental health provider and your response to the AO.

You enlisted in the Navy at age nineteen on 20 January 1981. Your pre-enlistment physical examination, on 9 January 1981, and self-reported medical history both noted no psychiatric or neurologic conditions or symptoms.

On 6 April 1982, you received non-judicial punishment (NJP) for unauthorized absence (UA) lasting nine days, and for missing ship's movement. You did not appeal your NJP. On 20 October 1983, you received NJP for UA lasting one hour, and for failing to obey a lawful order. You did not appeal your NJP.

On 20 December 1983, pursuant to your guilty pleas, you were convicted at a Special Court-Martial (SPCM) of three separate specifications of UA totaling thirty-three days. You were sentenced to confinement for forty-five days, a reduction in rank to the lowest enlisted paygrade, forfeitures of pay, and a discharge from the Navy with a Bad Conduct Discharge (BCD). The Convening Authority approved the SPCM sentence but suspended the BCD for six months.

While your BCD was pending appellate review, on 16 January 1984, you commenced a period of UA that terminated after fifty-three days on 9 March 1984 with your apprehension by civilian authorities in █. On 23 April 1984, you commenced another UA that terminated after six days on 29 April 1984. On 23 May 1984, you received NJP for both UAs and an Article 134 offense.

On 24 May 1984, you commenced yet another UA that terminated after 200 days on 10 December 1984 with your surrender to military authorities in █. In the interim, the General Court-Martial Convening Authority vacated the suspended BCD and enforced it due to continuing misconduct.

On 11 December 1984, you were convicted at a Summary Court-Martial (SCM) of your 200-day UA. You were sentenced to confinement and forfeitures of pay.

Upon completion of appellate review for your SPCM, on 9 April 1985, a Supplemental SPCM Order directed the execution of your BCD. Ultimately, on 16 April 1985, you were discharged from the Navy with a BCD and assigned an RE-4 reentry code.

On 10 December 1986, the Naval Discharge Review Board denied your initial application for upgrade relief. On 12 June 2013, the BCNR denied your initial petition for relief. On 22 August 2013, the BCNR again denied you any relief. However, on 19 February 2019, BCNR upgraded your discharge characterization to General (Under Honorable Conditions) (GEN) based on an AO recommending your upgrade due to you suffering from a mental health condition. On 17 December 2020, the BCNR denied your subsequent discharge upgrade petition.

The Board carefully considered all potentially mitigating factors to determine whether the interests of justice warrant relief in your case in accordance with the Hagel, Kurta, and Wilkie Memos. These included, but were not limited to, your desire for a discharge upgrade and changes to your separation code, narrative reason for separation, separation authority, and reentry code. You contend that : (a) you suffer from schizoaffective disorder, depressive type, (b) future policy changes for self-reporting would have provided you with therapy, counseling, and medications, (c) the Department of Veterans Affairs (VA) has granted you a service-connection for schizoaffective disorder and rated you at 70%, and (d) service-connect disabilities rated at 30% or higher are eligible for disability retirement. For purposes of clemency and equity consideration, the Board noted you provided a personal statement, VA documents, and documents from your military record.

As part of the Board review process for your current petition, the BCNR Physician Advisor who is a licensed clinical psychologist (Ph.D.), reviewed your contentions and the available records and issued an AO dated 16 November 2022. The Ph.D. stated in pertinent part:

Petitioner was appropriately referred for psychological evaluation and properly evaluated during his enlistment. 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, since they are not typically amenable to treatment within the operational requirements of Naval Service. Post-service, he has received a diagnosis of Schizoaffective disorder that has been attributed to military service. It is possible that the symptoms experienced during military service have worsened and been re-characterized as symptoms of Schizoaffective disorder with the passage of time and increased understanding. It is possible that some of his misconduct could be attributed to poor coping of his mental health symptoms, however it is difficult to attribute his extended UA to symptoms of a mental health condition given the absence of severe mental health symptoms or psychosis when evaluated during military service. There is no evidence he was unaware of his misconduct or not responsible for his behavior.

The Ph.D. concluded, “it is my considered clinical opinion there is post-service evidence of a mental health condition that may be attributed to military service. There is insufficient evidence all of his misconduct could be attributed to a mental health condition.”

In response to the AO, you provided additional information regarding the circumstances of your case.

After thorough 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 there was no nexus between any mental health conditions and/or related symptoms and your misconduct, and determined that there was insufficient evidence to support the argument that any such mental health conditions mitigated the SPCM misconduct that formed the basis of your discharge. As a result, the Board concluded that your misconduct was not due to mental health-related symptoms. 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 pattern of misconduct far outweighed any and all mitigation offered by such mental health conditions. The Board determined the record clearly reflected that your misconduct was willful and intentional, and demonstrated you were unfit for further service. The Board also noted that the evidence of record did not demonstrate you were not

mentally responsible for your conduct or that you should not be held accountable for your actions.

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. Additionally, absent a material error or injustice, the Board declined to summarily upgrade a discharge solely for the purpose of facilitating certain veterans' status or 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 for mental health conditions, the Board concluded that your serious misconduct and disregard for good order and discipline clearly merited your receipt of a BCD.

The Board also noted that, although it cannot set aside a conviction, it might grant clemency in the form of changing a characterization of discharge, even one awarded by a court-martial. However, the Board concluded that despite your contentions this is not a case warranting any additional clemency. You were properly convicted at a SPCM of multiple UA offenses, and convicted subsequently of an extended 200-day UA, and the Board did not find any evidence of an error or injustice in this application that warrants upgrading your BCD beyond the GEN characterization previously granted by this Board. The simple fact remains is that you left the Navy while you were still contractually obligated to serve on multiple occasions, and you went into a UA status each time without any legal justification or excuse. Ultimately, the Board determined the clemency previously granted to you by this Board adequately addressed any injustices that may have existed in your record. Therefore, while the Board carefully considered the mitigation evidence you provided, 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 your narrative reason for separation, changing your separation code, changing your separation authority, changing your reentry 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,

1/5/2023

