



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

█
Docket No. 6906-22
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 3 March 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 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 and your response to the AO.

You enlisted in the Navy and entered active duty on 12 September 1990. Your pre-enlistment physical examination, on 6 April 1990, and self-reported medical history both noted no neurologic conditions or symptoms. You disclosed pre-service marijuana use and a DUI conviction as part of your medical history. On 6 April 1990, you also acknowledged and signed the "Drug and Alcohol Abuse Statement of Understanding." Additionally, on 13 September

1990, upon reporting for initial recruit training (boot camp) you disclosed subsequent marijuana usage occurring just three weeks prior to beginning boot camp.

While still at boot camp, on 4 October 1990, you received non-judicial punishment (NJP) for two separate specifications of assaulting a fellow recruit. You did not appeal your NJP. On 31 October 1990, your command issued you a "Page 13" counseling warning (Page 13) documenting your undisclosed pre-service marijuana use. The Page 13 expressly warned you that any further deficiencies in performance and/or conduct may result in disciplinary action and in processing for administrative discharge. You did not submit a Page 13 rebuttal statement.

On 5 March 1992, you received NJP for an unauthorized absence (UA) lasting eighteen (18) days. You did not appeal your NJP. On 5 March 1992, your command issued you a Page 13 documenting your UA. The Page 13 expressly warned you that any further deficiencies in performance and/or conduct may result in disciplinary action and in processing for administrative discharge. You did not submit a Page 13 rebuttal statement.

On 24 August 1992, you received NJP for two separate assault specifications, drunk and disorderly conduct, and disobeying a lawful order. You did not appeal your NJP.

On 9 October 1992, you were convicted at a Summary Court-Martial (SCM) for violating a lawful written order, willful disobedience of a superior commissioned officer, and insubordinate conduct. You were sentenced to restriction for sixty (60) days and forfeitures of pay. The Convening Authority approved the SCM sentence as adjudged.

On 10 October 1992, 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 consulted with counsel and elected your right to present your case to an administrative separation board (Adsep Board).

On 11 October 1992, an Adsep Board convened to hear your case. At the Adsep Board you were represented by counsel. Following the presentation of evidence and witness testimony, the Adsep Board members unanimously determined that you committed misconduct as charged. Subsequent to the unanimous misconduct finding, the Adsep Board members recommended that you be separated from the naval service with an under Other Than Honorable conditions (OTH) characterization of service. In the interim, you underwent a drug/alcohol evaluation on 12 October 1992. A Navy Medical Officer determined that you met the criteria for psychoactive substance dependence, moderate, and recommended Level II or Level III rehabilitation treatment.

On 25 October 1992, your commanding officer (CO) recommended a twelve-month suspension of your OTH to afford you an opportunity to attend Level III treatment and continue your career. On 9 November 1992, the Separation Authority approved your OTH discharge, but directed that it be held in abeyance by your CO pending further observation of your conduct. On 16 November 1992, you signed a Page 13 counseling sheet acknowledging being retained on active duty in a probationary status for twelve (12) months. You expressly understood that any

further deficiencies in performance/conduct may result in disciplinary action, new administrative action, or vacation of the suspension and execution of the separation.

Following alcohol rehabilitation treatment, you were placed in a twelve-month aftercare program. Your aftercare program, *inter alia*, directed you to maintain abstinence from alcohol, attend weekly AA meetings for twelve months, and undergo individual counseling. However, you were subsequently involved in an incident that violated the terms of your aftercare regimen. Ultimately, on 24 September 1993, you were discharged from the Navy for misconduct with an OTH characterization of service and assigned an RE-4 reentry code.

On 10 July 1995, the Naval Discharge Review Board (NDRB) denied your discharge upgrade application. You did not proffer any mental health contentions with your NDRB application.

On 23 April 2018, this Board denied your initial petition for relief. In your initial petition, you contended, in part, that you suffered from undiagnosed PTSD on active duty.

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) you were deployed to the █ in support of █ where you had a traumatic experience that repeatedly manifested itself through anxiety, hypervigilance, and disturbing memories, (b) throughout your service you turned to alcohol to quell PTSD symptoms, and (c) such self-medication, combined with reduced executive decision-making abilities due to your mental health condition, directly led to the misconduct underlying your discharge. For purposes of clemency and equity consideration, the Board considered the evidence you provided in support of your application.

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 January 2023. The Ph.D. stated in pertinent part:

During military service, the Petitioner was diagnosed with an Alcohol Use Disorder, based on information from his service record and the report he provided to the mental health clinician. Post-service, a clinician from the VA has provided treatment for PTSD that is temporally remote to his military service and attributed to military experiences. There is insufficient information regarding his symptoms and traumatic precipitant to attribute his misconduct to symptoms of PTSD, particularly given his problematic alcohol use that preceded military service and continued during military service. 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 Ph.D. concluded, "it is my clinical opinion there is post-service evidence from the VA of a diagnosis of PTSD that may be attributed to military service. There is insufficient evidence his misconduct could be attributed to PTSD."

In response to the AO, you provided evidence in rebuttal. Following a review of your AO rebuttal submission, the Ph.D. did not change or modify their original AO. The Ph.D. noted that while your submitted records provided additional support for your PTSD diagnosis claims, no additional information was provided regarding your symptoms or any traumatic precipitants.

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 that there was no convincing evidence of any 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 misconduct that formed the basis of your discharge. As a result, the Board concluded that 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 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. While the Board carefully considered the evidence you provided in mitigation, 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,

3/7/2023



Executive Director

Signed by:

