

On 3 November 2004, your unauthorized absence (UA) for five days was the subject of an Executive Officer's Inquiry (XOI). However, the Executive Officer did not forward such offense for non-judicial punishment (NJP) and dismissed the case with a verbal counseling/warning.

However, on 2 June 2005, you received NJP for: (a) UA (from February 2005 to 6 May 2005), (b) dereliction of duty by failing to attend college classes and earning a 0.0 grade point average, and (c) your service discrediting conduct and conduct prejudicial to good order and discipline. You did not appeal your NJP.

On 2 June 2005, your command recommended your disenrollment from the STA-21 program. Your commanding officer expressly stated in his recommendation:

During his time at the █, Officer Candidate █ demonstrated substandard academic performance. He has been called to a Performance Review Board two times for academic reasons and has shown no improvement. He has a cumulative GPA of 1.765, which is below the 2.500 GPA required by the STA-21 program. █ consciously decided to cease attending and/or participating in his Spring 05 classes and failed to notify my staff or his professors. His actions resulted in a 0.00 GPA for the Spring 05 semester.

On 7 June 2005, your command notified you that you were being processed for an administrative discharge by reason of misconduct due to a pattern of misconduct. You waived your rights to consult with counsel, submit rebuttal statements to the separation authority, and to request an administrative separation board. Ultimately, on 24 June 2005, you were discharged from the Navy for misconduct with a General (Under Honorable Conditions) (GEN) characterization of service and assigned an RE-4 reentry code.

On 13 May 2011, the Naval Discharge Review Board (NDRB) denied your application for discharge upgrade relief. In 2017, the NDRB again denied your upgrade application. On 10 February 2011, this Board denied your petition for relief.

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) TBI and PTSD were mitigating factors to your misconduct, (b) post-service the VA diagnosed you with service-connected TBI and PTSD, (c) up until your enrollment at the █ your record demonstrated honorable service, and (d) it was not until you were exposed to the demands of the █ program that the effects of your TBI and PTSD prevented you from functioning under pressure. For purposes of clemency and equity consideration, the Board noted the supporting documentation you provided with 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 15 November 2022. The Ph.D. stated in pertinent part:

The Petitioner submitted VA disability and compensation rating which had changed from 30% to 100% service connected disability for PTSD with TBI from 2009 to 2017. He also submitted a █ Peace Officer's Accident Report from August 15, 2000 which indicated a fatal motor vehicle accident that involved the Petitioner and one other person who had been in the vehicle at the time. There is no evidence that he was diagnosed with a mental health condition in military service, or that he exhibited any psychological symptoms or behavioral changes indicative of a diagnosable mental health condition. He has provided no medical evidence in support of his claims. Unfortunately, his personal statement is not sufficiently detailed to establish clinical symptoms or provide a nexus with his misconduct. Additional records (e.g., medical records during service, and post-service 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 mental health condition (PTSD) or TBI that may be attributed to military service. There is insufficient evidence that his misconduct could be attributed to a mental health condition or TBI."

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 TBI or mental health conditions and/or related symptoms and your misconduct and academic failures, and determined that there was insufficient evidence to support the argument that any such TBI or 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 a TBI and/or mental health-related conditions or symptoms. Moreover, even if the Board assumed that your misconduct was somehow attributable to any mental health conditions or TBI, 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 and academic malfeasance 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 discharge processing for misconduct, whether done administratively or as a result of a court-martial, would take absolute precedence over the physical evaluation board (PEB) process. Notwithstanding, based on your available service records, the Board noted that any injuries you may have suffered as a result of your traffic accident in August 2000 were not of

such severity to warrant medical board/PEB processing. The Board also noted that following your accident, you obviously did not suffer from any occupational impairment due to a TBI as your enlisted performance evaluations remained consistently favorable into mid-2004 and you earned two Navy-Marine Corps Achievement Medals for professional achievement, the first in January 2002 and the second in May 2003.

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 GEN or Other Than Honorable (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 and/or a future naval officer responsible for the care and well-being of enlisted Sailors. Additionally, the Board noted that Department of Veterans Affairs (VA) eligibility determinations for health care, disability compensation, and other VA-administered benefits are for internal VA purposes only. Such VA eligibility determinations, disability ratings, and/or discharge classifications are not binding on the Department of the Navy. 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 willful academic failures and disregard for good order in discipline clearly merited your receipt of a GEN. While the Board carefully considered the matters you submitted 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 upgrading your characterization of service or granting an upgraded characterization of service 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,

1/18/2023

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Executive Director

Signed by: █