



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

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Docket No. 7030-22
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 13 January 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 the advisory opinion (AO) furnished by a qualified mental health provider and your response to the AO.

You enlisted in the Navy and entered active duty on 3 July 1990. Your pre-enlistment physical examination, on 20 December 1989, and self-reported medical history both noted no psychiatric or neurologic conditions or symptoms. Additionally, your submarine duty physical examination, on 2 October 1990, and self-reported medical history both noted no psychiatric or neurologic conditions or symptoms.

On 22 August 1991, you received non-judicial punishment (NJP) for two separate specifications of failing to obey a lawful order, unauthorized absence (UA), and attempted larceny. You did

not appeal your NJP. As a result, on 4 September 1991, your command notified you that you were being processed for an administrative discharge by reason of misconduct due to the commission of a serious offense. On 20 September 1991, you consulted with counsel and elected your right to present your case to an administrative separation board (Adsep Board).

On 8 October 1991, an Adsep Board convened to hear your case on board ██████████ ██████████. At the Adsep Board, you were represented by a Navy Judge Advocate, and you testified under oath. Following the presentation of evidence and witness testimony, the Adsep Board members unanimously determined that you committed the misconduct as charged. Subsequent to the unanimous misconduct finding, the Adsep Board members recommended that you be separated from the naval service with a General (Under Honorable Conditions) (GEN) characterization of service. In the interim, on 2 December 1991, your separation physical examination and self-reported medical history noted no psychiatric or neurologic conditions or symptoms. On 18 December 1991, at your substance abuse dependency screening, you were diagnosed with alcohol dependency. On 19 December 1991, you requested alcohol rehabilitation treatment at a VA hospital prior to discharge. However, on 1 January 1992, the Bureau of Naval Personnel (BUPERS) directed that your GEN separation be held in abeyance pending the outcome of a Special Court-Martial due to some additional misconduct.

On 24 January 1992, you submitted a voluntary written request for an Other Than Honorable (OTH) conditions administrative discharge in lieu of trial by court-martial for seven separate specifications of larceny, and seven separate specifications of receiving stolen property. Prior to submitting this voluntary discharge request you conferred with a qualified military lawyer, at which time you were advised of your rights and warned of the probable adverse consequences of accepting such a discharge. You indicated your request was voluntarily submitted free from any duress or promises of any kind, and that you were entirely satisfied with the advice you received from counsel. You acknowledged if your request was approved, an OTH characterization of service was authorized. As a result of this course of action, you were spared the stigma of a court-martial conviction for your thefts, as well as the potential sentence of confinement and the negative ramifications of receiving a punitive discharge from a military judge. In the interim you underwent a mental health evaluation on 30 January 1992. The Navy Medical Officer (NMO) determined that you did not suffer from any mental illness, and that you did not have any personality disorder or any known physical disorder. The NMO concluded that you were not mentally ill and considered responsible for your actions. Ultimately, on 28 February 1992, you were separated from the Navy with an OTH discharge characterization and assigned an RE-4 reentry code.

On 29 September 1997, the Naval Discharge Review Board (NDRB) denied your initial application for discharge relief. On 4 August 1999, this Board denied your petition for a discharge upgrade. On 19 September 2007, the NDRB again denied your application. On both 17 March 2008 and 16 May 2014, this Board denied your reconsideration requests. On 17 November 2021, the Department of Veterans Affairs (VA) determined your service was dishonorable for VA purposes.

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 discharge upgrade and contentions that: (a) you experienced mental health episodes on active duty and continue to have a lifetime of chronic illness, (b) you were diagnosed with schizophrenia post-service, and (c) you have demonstrated outstanding post-service conduct. For purposes of clemency and equity consideration, the Board noted you provided supporting documentation describing post-service accomplishments and advocacy letters.

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 5 December 2022. The Ph.D. stated in pertinent part:

There is no evidence that the Petitioner 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., 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 that may be attributed to military service. There is insufficient evidence that his misconduct could be attributed to a mental health condition."

In response to the AO, you provided additional evidence to consider. The Ph.D. subsequently stated "[o]riginal Advisory Opinion remains the same. There is evidence of a post-service diagnosis of Schizophrenia. There is insufficient evidence that his post-service mental health condition mitigated his misconduct while in service."

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 purported 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 serious misconduct was not due to mental health-related conditions or 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 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. Moreover, the Board concluded that your criminal offenses of larceny and receiving stolen property were not the type of misconduct

that would be excused or mitigated by mental health conditions even with liberal consideration. The Board also concluded 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.

Additionally, the Board observed that character of military service is based, in part, on conduct and overall trait averages which are computed from marks assigned during periodic evaluations. Your overall active duty trait average in conduct was approximately 2.90. Navy regulations in place at the time of your discharge required a minimum trait average of 3.0 in conduct (proper military behavior), for a fully Honorable characterization of service. The Board concluded that your conduct marks during your active duty career were a direct result of your serious misconduct which further justified your OTH characterization of discharge. 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, and that your separation was in accordance with all Department of the Navy directives and policy at the time of your discharge.

The Board also 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 determined that characterization under OTH conditions is generally warranted for misconduct and 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 generally will not summarily upgrade a discharge solely for the purpose of facilitating VA benefits, or enhancing educational or employment opportunities. The Board carefully considered any matters submitted regarding your character, post-service conduct, and personal/professional accomplishments, however, 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,

1/24/2023

[REDACTED]

Executive Director

Signed by: [REDACTED]