



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. 7671-22
Ref: Signature Date



Dear █

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 27 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 an advisory opinion (AO) furnished by a qualified mental health provider and your response to the AO.

The Board determined that your personal appearance, with or without counsel, would not materially add to their understanding of the issues involved. Therefore, the Board determined that a personal appearance was not necessary and considered your case based on the evidence of record.

You enlisted in the U.S. Navy and entered active duty on 18 July 1975. Your pre-enlistment

physical examination, on 27 March 1975, and self-reported medical history both noted no psychiatric or neurologic conditions or symptoms. You expressly denied any "Bed Wetting Since Age 12" on your self-reported medical history.

On 3 September 1976, you were convicted at a Special Court-Martial (SPCM) of an undisclosed offense. An entry on your DD Form 214 noted "time lost" beginning on the day of the SPCM (3 September 1976) and lasting through 7 October 1976. "Time lost" describes time in either an unauthorized absence (UA) status, or time spent in military or civil confinement following a conviction.

On 27 December 1976, you received non-judicial punishment (NJP) for failing to obey a lawful order for smoking an unknown substance in the Port Boat Room. You did not appeal your NJP. On 25 February 1977, you received NJP for three separate specifications of failing to obey a lawful order (possessing drug paraphernalia, medical equipment, and a dangerous weapon), and concealing a Navy advancement examination. You did not appeal your NJP. On 21 March 1977, your command issued you a "Page 13" counseling warning (Page 13) documenting your frequent involvement of a discreditable nature with military authorities. The Page 13 advised you that future breaches of discipline with military or civil authorities may result in you being recommended for an undesirable discharge by reason of misconduct.

On 16 June 1977, you received NJP for UA and dereliction in the performance of duties. You did not appeal your NJP. On 25 August 1977, you received NJP for the possession of marijuana. You did not appeal your NJP. On 29 August 1977, you received another Page 13 warning that advised you that any further misconduct may result in not only disciplinary action but in processing for administrative discharge.

On 23 September 1977, you received NJP for failing to obey a lawful order. You did not appeal your NJP. On 6 October 1977, you received NJP for failing to obey a lawful order. You did not appeal your NJP. On 22 November 1977, you received NJP for UA. You did not appeal your misconduct.

On 6 November 1978, you received NJP for two separate UA specifications and dereliction of duty. You did not appeal your NJP. On 12 December 1978, you received NJP for dereliction in the performance of duties, and wrongfully using provoking speech/language. You did not appeal your NJP.

On 11 January 1979, contrary to your pleas you were convicted at a SPCM of the larceny of a radio from another Sailor. You were sentenced to confinement for four months, forfeitures of pay, reduction in rank to the lowest enlisted paygrade (E-1), and a discharge from the Navy with a Bad Conduct Discharge (BCD). On 14 March 1979, the Convening Authority approved the SPCM sentence. On 9 April 1979, the General Court-Martial Convening Authority approved the SPCM sentence. On 28 June 1979, the Navy-Marine Corps Court of Military Review affirmed the SPCM findings and sentence.

However, while your BCD was pending, on 3 July 1979, you received NJP for UA and for making a false official statement. You did not appeal your NJP. On 7 August 1979, you received NJP for UA and two separate specifications of insubordinate conduct. On 23 August 1979, the Naval Clemency and Parole Board denied you any clemency.

On 3 October 1979, your separation physical examination and self-reported medical history both noted no psychiatric or neurologic conditions or symptoms. On your medical history you stated, "I am in good health," and you again expressly denied any "Bed Wetting Since Age 12." Upon the completion of appellate review in your case, on 11 October 1979, you were discharged from the Navy with a BCD and assigned an RE-4 reentry code.

On 27 June 1983, the Naval Discharge Review Board (NDRB) denied your initial application for relief. The NDRB determined your BCD was proper as issued and no change was warranted. On 14 November 2000, this Board denied your previous 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 change to your narrative reason for separation in addition to your contentions that: (a) you were the victim of reprehensible physical and emotional abuse as a child, (b) as a result of the abhorrent actions of your father and inaction by your step-mother, you developed PTSD and numerous other underlying mental health conditions, (c) the psychological effects of the abuse you suffered directly contributed to his behavioral problems in the military, (d) you were diagnosed with PTSD stemming you're your childhood trauma, (e) you were experiencing PTSD symptoms on active duty following harassment for nocturnal enuresis, (f) you were suffering from PTSD prior to engaging in any form of military misconduct, (g) your military misconduct was substantially mitigated by your underlying PTSD, (h) post-service have dedicated yourself to overcoming the psychological trauma you suffered as a child, overcome drug addiction, obtained numerous advanced degrees, and contributed immensely to your local communities, and (i) you have obtained two master's degrees, volunteered to help others overcome their own trauma, started a non-profit to help the formerly incarcerated, and successfully manage your own business. For purposes of clemency and equity consideration, the Board considered the evidence you submitted 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 22 December 2022. The Ph.D. stated in pertinent part:

There is no evidence he was diagnosed with a mental health condition in military service. Throughout his disciplinary processing, there were no concerns raised of a mental health condition that would have warranted a referral for evaluation. He has provided no medical evidence in support of his claims. Unfortunately, his personal statement is not sufficiently detailed to establish clinical symptoms in service or provide a nexus with his misconduct, particularly as he denied some of

the misconduct, such as the theft. 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 considered clinical opinion there is insufficient evidence of a diagnosis of PTSD or another mental health condition that may be attributed to military service. There is insufficient evidence his misconduct could be attributed to PTSD or another mental health condition."

In response to the AO, you submitted rebuttal evidence for consideration. Following a review of your AO rebuttal that included a clinical psychologist's January 2023 evaluation diagnosing you, inter alia, with PTSD from childhood trauma, the Ph.D. modified the AO. The Ph.D. determined that while it was possible that some of your misconduct could be attributed to PTSD symptoms, it was difficult to attribute other misconduct such as theft and false official statements (falsifying muster sheets) to PTSD. The Ph.D. subsequently opined that while there was post-service from a civilian psychologist of a service-connected PTSD diagnosis, there was insufficient evidence that all of your misconduct could be attributed to PTSD.

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 nexus between any mental health conditions and/or related symptoms and some of your misconduct, and determined that there was insufficient evidence to support the argument that any such mental health conditions mitigated some of the misconduct that formed the basis of your discharge. As a result, the Board concluded that the majority of your misconduct was not due to mental health-related conditions or symptoms. Additionally, the Board concluded that certain misconduct you committed would not be excused by mental health conditions even with liberal consideration (e.g. weapons possession, larceny, making a false official statement). 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 cumulative 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 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.

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 calculated from your available performance evaluations during your enlistment was approximately 2.45 in conduct. Navy regulations in place at the time of your discharge recommended a minimum trait average of 3.0 in conduct (proper military behavior), for a fully honorable characterization of service. The Board concluded that your

misconduct was not minor in nature and that your conduct marks during your active duty career were a direct result of your serious misconduct.

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 and/or remove any derogatory materials from a service record solely for the purpose of facilitating certain veterans' benefits, or enhancing educational or employment opportunities. Accordingly, 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 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 this is not a case warranting any clemency. You were properly convicted at a SPCM of serious misconduct, and the Board did not find any evidence of an error or injustice in this application that warrants upgrading your BCD. The Board carefully considered any matters submitted regarding your character, exemplary 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,

2/2/2023

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Executive Director

Signed by: █