



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. 7758-22
Ref: Signature Date

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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 8 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). The Board also considered the advisory opinion (AO) furnished by a qualified mental health professional, which was previously provided to you. Although you were afforded an opportunity to submit an AO rebuttal, you chose not to do so.

You enlisted in the Navy and began a period of active duty on 22 November 1994. On 27 April 1996, you were convicted by a summary court-martial (SCM) of two specifications of unauthorized absence (UA) totaling 36 days, missing movement, dereliction of duty and wrongfully sitting down on post. On 7 June 1996, you were issued an administrative remarks (Page 13) counseling concerning deficiencies in your performance and conduct. You were advised that any further deficiencies in your performance and/or conduct may result in disciplinary action and in processing for administrative separation. On 10 December 1996, you

received non-judicial punishment (NJP) for UA totaling 23 days and wrongful appropriation of a car. On 22 January 1997, you were again convicted by a SCM of 15 specifications of failure to go to and from your appointed place of duty. As a result, on 27 January 1997, you were notified that you were being recommended for administrative discharge from the Navy by reason of misconduct due to commission of a serious offense and misconduct due to pattern of misconduct. You were advised of your procedural rights and elected your procedural right to consult with military counsel and present your case to an administrative discharge board (ADB). On 24 February 1997, an ADB convened, found that you committed misconduct due to commission of a serious offense and misconduct due to pattern of misconduct, and recommended your administrative discharge from the naval service with a General (Under Honorable Conditions) characterization of service.

The commanding officer agreed with the ADBs recommendation but suspended your administrative separation for a period of 12 months in order to rehabilitate you. However, on 5 February 1998, you received a second NJP for three specifications of UA totaling 25 days. On 30 April 1998, you received a third NJP for UA.

Unfortunately, some documents pertinent to your administrative separation are not in your official military personnel file (OMPF). Notwithstanding, the Board relies on a presumption of regularity to support the official actions of public officers and, in the absence of substantial evidence to the contrary, will presume that they have properly discharged their official duties. Based on the information contained on your Certificate of Release or Discharge from Active Duty (DD Form 214), you were separated from the Navy, on 21 May 1998, with an "Other Than Honorable Conditions (OTH)" characterization of service, your narrative reason for separation is "Pattern of Misconduct," your reenlistment code is "RE-4," and your separation code is "GKA," which corresponds to misconduct due to pattern of misconduct.

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 to change your discharge character of service, restore your rank, restore all awards and decorations, and evaluate medical and psychological records both past and present. The Board also considered your contentions that: 1) you did not receive adequate or appropriate medical care or a psychiatric evaluation to address your alleged misconduct; 2) you experienced anxiety, depression, and PTSD while onboard the ■ after experiencing a collision with another ship in which you sustained injuries; and 3) you experienced sexual advances from other service members while attempting to perform your required duties and this caused you stress and anxiety. You assert that you have been diagnosed with PTSD, anxiety, and numerous physical injuries not addressed at the time of your service. For purposes of clemency and equity consideration, the Board noted you provided health care progress notes but no supporting documentation describing post-service accomplishments or advocacy letters.

As part of the Board's review, a qualified mental health professional reviewed your request and provided the Board with an AO on 17 January 2023. The AO noted in pertinent part:

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 post-service medical evidence of PTSD and other mental health conditions that are temporally remote to his military service and appear unrelated. Unfortunately, his personal statement is not sufficiently detailed to provide a nexus with his misconduct, particularly given his in-service statements that his UA was to address personal stressors. 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 AO concluded, "it is my 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."

After thorough review, the Board concluded your potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your three NJPs and two SCM convictions, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and concluded your misconduct showed a complete disregard for military authority and regulations. The Board also considered the likely negative impact your conduct had on the good order and discipline of your command. Additionally, the Board concurred with the AO that there is insufficient evidence of a diagnosis of PTSD or another mental health condition that may be attributed to military service, and there is insufficient evidence your misconduct could be attributed to PTSD or another mental health condition. As the AO noted, your personal statement is not sufficiently detailed to provide a nexus with your misconduct. The Board also noted, despite your record of misconduct, you were given an opportunity to earn a better characterization of service when your commanding officer suspended your first administrative separation; but you continued to commit misconduct. Therefore, the Board concluded you already received a large measure of clemency from the Navy. 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 otherwise not be held accountable for your actions. As a result, the Board concluded your conduct constituted a significant departure from that expected of a service member and continues to warrant an OTH characterization. While the Board carefully considered the evidence 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 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 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,

3/23/2023

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Executive Director

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