



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

█  
Docket No. 7858-22  
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 7 April 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.

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 Navy and entered active duty, on 13 June 2002, at age twenty-eight. Your pre-enlistment physical examination, on 24 May 2002, and self-reported medical history both

noted no psychiatric or neurologic conditions or symptoms. On 21 September 2002, you reported for duty on board the ██████████ pre-commissioning unit in ██████████. The ██████████ was commissioned on 12 July 2003, and initially homeported in ██████████ before moving to ██████████ in 2004.

On 16 December 2004, you received non-judicial punishment (NJP) for two separate specifications of assault consummated by a battery, drunk and disorderly conduct, and incapacitation for duty. You did not appeal your NJP. On 28 March 2005, you were convicted in Superior Court, ██████████ of a domestic violence offense to your spouse. You were sentenced to probation, a work furlough program, a fine, and the Court ordered you to complete a 52-week domestic violence rehab program.

Following your civilian conviction, 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, and misconduct due to a civil conviction. You elected your right to present your case to an administrative separation board (Adsep Board).

On 15 November 2005, an Adsep Board convened to hear your case. At the Adsep Board, you were represented by military counsel. Following the presentation of evidence and witness testimony, the Adsep Board members unanimously determined that you the committed misconduct as charged. Subsequent to the misconduct finding, the Adsep Board members unanimously recommended that you be separated from the naval service with an under Other Than Honorable conditions (OTH) characterization of service. Ultimately, on 2 January 2006, you were discharged from the Navy for misconduct with an OTH characterization of service and assigned a RE-4 reentry code.

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) your discharge was inequitable because of a misdiagnosed condition that was exacerbated on active duty, (b) you acquired PTSD on active duty and exacerbated your “precondition” [sic] schizoaffective disorder due to injuries and pressures of pre-commissioning a ship and deploying to Iraq in support of Operation Iraqi Freedom (OIF), (c) you served in a combat zone and showed signs of PTSD prior to your Adsep, and (d) the VA made a decision granting you a 100% service-connection. For purposes of clemency and equity consideration, the Board noted the VA granted you a service-connection for an acquired psychiatric disorder to include schizoaffective disorder, PTSD, anxiety, depression, and bipolar disorder with an evaluation of 100% effective 9 September 2019. The Board also noted that your Adsep Board occurred in November 2005 and you were discharged prior to the ██████████ deploying in support of OIF in early 2006.

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 initial AO dated 13 January 2023. The Ph.D. stated in pertinent part:

The Petitioner submitted evidence of his VA rating which indicates 100% service connection for Schizoaffective Disorder, PTSD, Anxiety, Depression and Bipolar Disorder as of September 9, 2019. He also submitted an Independent Medical Evaluation from ██████████ who indicated that, "It is at least as likely as not that his current diagnoses of Schizoaffective Disorder, Bipolar Type [sic] Disorder and Post Traumatic Stress Disorder are related to the misconduct events during active duty that led to his discharge." Unfortunately, no medical records are available for review in the Petitioner's service record, however the author of the medical evaluation listed above mentioned having reviewed a number of documents pursuing to formulating his assessment. These records were not submitted with the Petitioner's evidence. 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. Unfortunately, his personal statement is not sufficiently detailed to establish clinical symptoms or provide a nexus with his misconduct. Additional records (e.g., active duty medical records, 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 AO 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."

Following a review of your AO rebuttal submission, the Ph.D. modified their original AO. The Ph.D. stated in pertinent part:

The Petitioner has provided evidence in support of a multitude of active duty and post-service mental health diagnoses. He was diagnosed with Alcohol Use Disorder, Paranoid Personality Disorder and Dysthymia in service. Post-service, he has been diagnosed with Psychosis Not Otherwise Specified [NOS], Depressive Disorder NOS, Schizophrenia Paranoid Type, and Schizoaffective Disorder. It is possible that the observations made which led to the diagnosis of Paranoid Personality Disorder were in fact prodromal observations of what later became Psychosis in the form of either Schizophrenia or Schizoaffective Disorder.

The Ph.D. revised the original conclusion by stating, "it is my considered clinical opinion that there is both active duty and post-service evidence of a mental health condition. It is possible that he was experiencing prodromal symptoms of Schizophrenia which could have contributed to his misconduct."

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, notwithstanding the revised AO, 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. Additionally, the Board concluded that the majority of the misconduct you committed, particularly the domestic violence and assault offenses, was not the type of misconduct that would be excused by mental health conditions, even with liberal consideration. 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. 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 misconduct and disregard for good order in discipline clearly merited your discharge. 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 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,

4/14/2023

