



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. 7983-22
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 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.

You enlisted in the Navy and entered active duty on 17 July 2013. Your pre-enlistment physical examination on, 20 February 2013, and self-reported medical history both noted no psychiatric or neurologic conditions or symptoms.

On 5 February 2017, you received non-judicial punishment (NJP) for the wrongful destruction of government property when you willfully damaged a laptop by punching the LCD screen causing approximately \$1,315.00 in damage. You did not appeal your NJP.

On 19 June 2017, you received NJP for insubordinate conduct and provoking speech and gestures. You did not appeal your second NJP. On 3 October 2017, the suspended portion of your June 2017 NJP was vacated and enforced due to continuing misconduct.

On 3 October 2017, you received NJP for: (a) disrespect toward a superior commissioned officer, (b) willfully disobeying a superior commissioned officer, and (c) making a false official statement. You did not appeal your NJP. On 17 February 2018, the suspended portion of your October 2017 NJP was vacated and enforced due to continuing misconduct.

On 17 February 2018, you received NJP for forgery. You did not appeal your NJP. Following your fourth NJP, your command notified you that you were being processed for an administrative discharge by reason of misconduct due to a pattern of misconduct. Ultimately, on 4 April 2018, you were discharged from the Navy for misconduct with a General (Under Honorable Conditions) (GEN) characterization of service and assigned a RE-4 reentry code.

On 21 January 2021, the Naval Discharge Review Board (NDRB) denied your initial application for discharge upgrade relief. On 9 May 2022, the NDRB denied your second application and again determined that your GEN discharge was proper as issued, and that no change was warranted. The NDRB medical board member's opinion/comments noted that you wanted an early separation from the Navy, and after such request was denied, your NJPs started.

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 change to your narrative reason for separation, along with your contentions that: (a) a discretionary error was made when your years of honorable service were disregarded, and you were discharged because of unintentional spur-of-the-moment decisions, (b) you suffered from alcohol dependency on active duty, (c) the misconduct leading to your first three NJPs was directly affected by your PTSD, major depressive disorder (MDD), and alcohol dependency, (d) your first four years of service were misconduct free and you were by all accounts a stellar Sailor, (e) your mental health conditions ultimately led to a significant deterioration in your behavior, professionalism, and military bearing, and you soon found yourself relying on alcohol as a means of self-medication, and (f) a change in your discharge status will enable you the chance to no longer be prejudiced by your unfavorable discharge. For purposes of clemency and equity consideration, the Board considered the evidence you provided 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 20 January 2023. The Ph.D. stated in pertinent part:

Previously reviewed evidence indicates that during military service, the Petitioner was diagnosed with an Adjustment Disorder and an Alcohol Use Disorder. Post-service, the VA has granted service connection for MDD, and PTSD is listed as a problem in VA records. There is evidence the Petitioner was experiencing mental health concerns during the period of his misconduct. Mental health concerns may account for some of his misconduct following three years of incident-free service, as irritability and disrespect could be considered indicators of his MDD diagnosis. However, it is difficult to attribute a false official statement to a mental health condition; and it is not possible to attribute forgery to a mental health condition, as he denies having engaged in wrong-doing.

The Ph.D. concluded, “it is my clinical opinion there is post-service evidence from the VA of mental health condition (MDD) that may be attributed to military service. There is post-service evidence from the VA of a diagnosis of PTSD. There is insufficient evidence all of his misconduct could be attributed to PTSD or another mental health condition.”

Following a review of your AO rebuttal submission, the Ph.D. did not change or modify their original AO. The Ph.D. noted your AO rebuttal did not submit any new or additional medical evidence for consideration.

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 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. 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 took issue with your contention that a GEN characterization was an unfavorable discharge status. The Board noted that with a GEN discharge you are entitled to receive most, but not all, of the same veterans' benefits of an honorably discharged service member. The Board determined that with four NJPs in your record, for arguably serious misconduct, you were fortunate to receive such a favorable characterization, and the Board unequivocally concluded that your cumulative misconduct merited no higher than a GEN discharge characterization.

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 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. Moreover, absent a material error or injustice, the Board declined to summarily upgrade a discharge solely for the purpose of facilitating veterans benefits, or enhancing educational or employment opportunities. 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

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Executive Director
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