



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. 7993-22

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 6 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.

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 commenced a period of service on 22 September 1997. Your enlistment application acknowledged pre-service alcohol abuse. On 17 November 1998, you received Non-judicial Punishment (NJP) for violating Uniform Code of Military Justice (UCMJ)

Article 92, for failure to obey a lawful order. You were formally counseled due to your misconduct and did not appeal this NJP.

On 28 March 2000, you began a period of unauthorized absence (UA) and remained absent until 25 April 2000. During this period, you missed ship's movement on multiple occasions. On 18 June 2000, you were convicted at Special Court Martial (SPCM) of violating UCMJ Article 86, for a 28-day period of UA, Article 87, for five specifications of mission ship's movement, Article 95, for fleeing apprehension, Article 111, for driving under the influence (DUI) of alcohol, and Article 134, for two specifications of failure to maintain sufficient funds. You were awarded 30 days confinement, reduction in rank to E-2, and forfeitures of pay.

On 22 August 2000, you were once again in a UA status from your unit until 11 January 2001. On 26 January 2001, you were served with SPCM charges for violating UCMJ Article 86, for a period of UA totaling 142 days. In response, you made a written request to be discharged in lieu of trial by court-martial. Prior to submitting this 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. Your request was granted and you were discharged with an Other Than Honorable (OTH) characterization on 1 March 2001.

The Board carefully considered all potentially mitigating and/or extenuating 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: (a) your desire to upgrade your characterization of service, (b) your contention that you were struggling with undiagnosed PTSD due to an assault you suffered as a child, (c) your assertion that you were suffering from mental health issues due to your mother's poor health, (d) the impact of your mental health concerns on your conduct, and (e) your explanation that you went UA for the birth of your child. For purposes of clemency and equity consideration, the Board noted that you did not provide documentation related to your post-service accomplishments or character letters.

In your petition, you contend that you were suffering from undiagnosed PTSD due to an assault that occurred during your childhood, which caused you to self-medicate through substance abuse and contributed to the misconduct you committed while in service. You also note that you were suffering from mental health concerns due to the stress associated with your mother's poor health, which might have mitigated your discharge character of service. Finally, you explain that you were disappointed to attend the birth of your child, which drove you to go UA. You assert that you have been diagnosed with PTSD and Bipolar Disorder, and are now prescribed medication to assist you in dealing with the mental health symptoms vice self-medicating with alcohol. As part of the Board's review process, a qualified mental health professional reviewed your contentions and the available records and issued an AO dated 18 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 no post-service medical evidence of PTSD or another mental health condition. Unfortunately, his personal statement is not sufficiently detailed to establish

clinical symptoms or provide a nexus with his misconduct, particularly given his pre-service alcohol use and 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 NJP, SPCM, and request to be discharged in lieu of trial by court martial, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your repeated misconduct and its impact on the mission. The Board highlighted that you requested a discharge in lieu of trial, thereby avoiding the stigma of a court-martial conviction and the potential penalties of a punitive discharge and confinement at hard labor. The Board felt that the separation authority already granted you significant clemency by accepting your separation in lieu of trial by court martial.

In making this determination, the Board concurred with the advisory opinion that there was no convincing evidence that you suffered from any type of mental health condition while on active duty, or that any such mental health condition was related to or mitigated the misconduct that formed the basis of your discharge. The Board noted that you did not submit any clinical documentation or treatment records to support your mental health claims despite a request from BCNR on 27 October 2022 to specifically provide medical documentation in support of your claims. Further, on 3 August 2000, you completed a discharge physical, wherein you discussed depression or excessive worry regarding the birth of your son, but noted such issues were resolved. You also acknowledged problematic alcohol use, but no mental health issues were identified. Unfortunately, your personal statement is not sufficiently detailed to establish clinical symptoms or provide a nexus with his misconduct, particularly given your pre-service alcohol use and in-service statements that your UA was to address personal stressors. Although you were struggling with personal stressors related to your mother's health and your son's birth, the Board concluded that your misconduct was not due to mental health-related symptoms. The Board determined the record clearly reflected that your decision to go UA 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 otherwise not be held accountable for your actions. The Board highlighted that at the time of the misconduct, you could have requested a hardship discharge or otherwise resolved the situation through proper military channels, but chose not to do so. The Board concluded that your conduct constituted a significant departure from that expected of a Sailor and continues to warrant an OTH 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. Therefore, 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. 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,

3/9/2023

