



**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. 8201-22  
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. Although you were afforded an opportunity to submit an AO rebuttal for consideration, 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 on 1 May 2000. Your pre-enlistment physical examination on

17 March 2000 and self-reported medical history both noted no psychiatric or neurologic conditions or symptoms. On 10 October 2000, you reported for duty on board the ██████████

While still in initial recruit training (boot camp), on 24 May 2000, you received non-judicial punishment (NJP) for the willful disobedience of a superior commissioned officer. You did not appeal your NJP. On 1 August 2000, your command issued you a “Page 13” retention warning (Page 13) documenting your failure to disclose pre-service involvement with civil authorities. The Page 13 expressly warned you that any further deficiencies in performance and/or conduct may result in disciplinary action and in processing for administrative discharge. You did not submit a Page 13 rebuttal statement.

On 31 August 2000, you received NJP for larceny. You did not appeal your NJP. On 10 November 2000, you received NJP for larceny, obtaining services through false pretenses, using indecent language (racial slurs), and communicating a threat. You did not appeal your third NJP.

On 11 November 2000, your command notified you that you were being processed for an administrative discharge by reason of misconduct due to a pattern of misconduct, misconduct due to the commission of a serious offense, and fraudulent entry into the naval service. You waived your rights in writing to consult with counsel and to elect your right to present your case to an administrative separation board. Ultimately, after serving on active duty for just seven months, on 1 December 2000, you were discharged from the Navy for misconduct with an under Other Than Honorable conditions (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 associated changes to your narrative reason for separation, along with contentions that: (a) you were suffering from a serious chronic mental disorder which was undiagnosed during your service, and which contributed to the misconduct leading to your discharge, (b) your bipolar schizoaffective disorder was undiagnosed while on active duty and you were not taking any medication to treat the symptoms of this condition which made you angry and depressed, and you also had trouble complying with authority, and (c) you were the victim of racial discrimination and racial harassment on active duty which contributed to the misconduct leading to your discharge. For purposes of post-service conduct 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 24 January 2023. The Ph.D. stated 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 evidence of a mental health condition that is temporally remote to his military service, but claimed his mental health condition was identified closer to his military service. Unfortunately, available records are not sufficiently detailed to provide a nexus with all of his misconduct. Although unauthorized phone calls could be attributed to stress from initial training and unrecognized mental health symptoms, it is difficult to attribute failure to disclose pre-service criminal activity and in-service larceny to a mental health condition. The Petitioner denies having engaged in indecent language or communicating a threat. Additional records (e.g., active duty or 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 clinical opinion there is post-service civilian evidence of a mental health condition that may have been experienced during military service. There is insufficient evidence all of his misconduct could be attributed to a 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 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. 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,

4/11/2023

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Executive Director

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