



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

█
Docket No. 8263-22

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 reconsideration application on 19 May 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 U.S. Navy and entered active duty on 13 August 1982. Your pre-enlistment physical examination, on 20 April 1982, and self-reported medical history both noted no psychiatric or neurologic conditions or symptoms.

On 19 February 1985, you received non-judicial punishment (NJP) for unauthorized absence (UA) and larceny. You did not appeal your NJP. The same day, your command withdrew its recommendation for your advancement to the rank of E-4 due to your inadequate personal conduct and professional performance. On 20 February 1985, your command issued you a "Page 13" retention warning (Page 13) documenting your NJP. The Page 13 expressly warned you that any further deficiencies in your performance and/or conduct may result in disciplinary action and in processing for an administrative discharge. You did not submit a Page 13 rebuttal statement.

On 4 June 1985, you received NJP for UA lasting two days and for two separate specifications of failing to obey a lawful order. You did not appeal your second NJP.

On 10 June 1985, 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. You consulted with counsel and you subsequently waived your rights to submit statements on your own behalf and to request an administrative separation board.

In his discharge endorsement, your commanding officer (CO) recommended your separation with an under Other Than Honorable conditions (OTH) characterization of service. Specifically your CO stated:

█ has become a significant burden to this command. He has been counseled on numerous occasions by his Chiefs, branch officers and Division Officers IAW MILPERSMAN 3630600. He signed a page 13 administrative warning dated 20 February 1985. █ had previously been to CO's NJP on 19 February 1985 for violations of the UCMJ Articles 86 and 121. SNM has [been] found guilty of unlawfully stealing \$116.00 of phone services from another member of the squadron. There is no crime that will lower morale faster than theft. Fighter Squadron █ has had several other instances of theft, lying and UA implicating █ that could not be proven due to insufficient evidence. The fact remains that SA Shelton has been found guilty on two separate occasions of UCMJ violations and that one of those violations could have resulted in a BCD had it been referred to a SPCM. This man cannot remain out of serious trouble for any appreciable amount of time. He cannot be counted on to complete even the most mental tasks without constant direct supervision. This man has flagrantly violated squadron regulations. Every reasonable attempt has been made to help █ improve his performance but he has thwarted our efforts. This command will not tolerate continued misconduct by any of its members. █ has been a habitual offender. His occurs more that meets requirements for a discharge under other than honorable conditions. Accordingly, I most strongly recommend that █

█ be discharged from the Naval service and that the character of that discharge be other than honorable.

Ultimately, on 26 June 2003, you were discharged from the Navy for misconduct with an OTH characterization of service and assigned an RE-4 reentry code.

On 29 November 1988, the Naval Discharge Review Board (NDRB) denied your application to upgrade your discharge. The NDRB determined that your discharge was proper as issued and that no relief was warranted. On 17 June 2015, this Board denied your initial petition for discharge upgrade relief. You did not proffer any mental health contentions with your application. On 18 October 2021, this Board denied your second discharge upgrade petition. You did not proffer any mental health contentions with your second petition.

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 upgrade your discharge and change your narrative reason for separation with associated changes to your record. You contend that: (a) your current characterization is excessively harsh, considering the alleged misconduct giving rise to the administrative separation, (b) at the time of your separation and alleged misconduct you suffered from PTSD, depression, and anxiety that affected your judgment, (c) you were not aware of the importance of an administrative separation board at the time of your discharge, and you waived your right to such board without understanding both the legal and practical effects of doing so, (d) your current characterization prevents you from receiving meaningful and effective support and services from the Department of Veterans Affairs (VA), and depriving you of VA services is excessive and unnecessary, and (e) any intended consequence of an OTH characterization has been achieved, and the continued stigma is not necessary. The Board noted for clemency and equity purposes you submitted post-service VA mental health treatment records.

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 February 2023. The Ph.D. stated in pertinent part:

The Petitioner contends that he suffered from mental health issues sustained from seeing injury and death on the flight deck prior to his transfer to an administrative position. He indicated that he felt demoralized regarding his move as he loved his prior position on flight deck. The Petitioner did not mention these events in prior petitions and specific ship-board trauma events were not mentioned until 2019 when he began therapy services at the █ Vet Center. He further indicated that he participated in █, and although ship board, he recalled experiencing significant fear and uncertainty when he believed they were under attack. A buddy letter from a fellow sailor indicated that their ship – the █ █ did indeed fire Tomahawks, but they themselves never received any strikes.

The Petitioner submitted extensive psychotherapy records from the ██████████ Vet Center where he has been seen since 2019 and diagnosed with PTSD. He also submitted a VA Disability Benefits Questionnaire (DBQ) whereby the psychologist diagnosed him with Persistent Depressive Disorder and Anxiety Disorder NOS. The Petitioner maintains that his larceny charge was using a stolen calling card which a fellow sailor gave him, and that he did not know the card was stolen. His record indicates that he submitted a statement to the same, however it is not found within his service record for review. There is no evidence that the Petitioner was diagnosed with a mental health condition while in military service, or that he exhibited any psychological symptoms or behavioral changes indicative of a diagnosable mental health condition. The Petitioner waived his procedural rights and never mentioned any of these events during separation proceedings. Given his inconsistencies and temporally remote anecdote of ship-board trauma, it is difficult to conclude that his current mental health diagnoses are related to his time in service.

The Ph.D. concluded, “it is my considered clinical opinion there is sufficient evidence of a post-service mental health condition/conditions, however there is insufficient evidence that his misconduct could be attributed to a mental health condition.”

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 any 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 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 disagreed with your contention that you somehow were not aware of the importance of an administrative separation and that you waived your rights without understanding both the legal and practical effects of doing so. The Board noted, however, that you expressly elected to consult with counsel prior to waiving your rights in connection with your pending separation proceedings, and the Board determined you would have been advised of your rights and been warned of the adverse consequences of a possible OTH discharge characterization at such time.

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. 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,

5/23/2023

