



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. 8518-22
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 limitations 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 27 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 service 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)/mental health condition (MHC) (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 an advisory opinion (AO) from a qualified mental health professional. 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 United States Navy and commenced a period of service on 27 February 1991. On 10 October 1991, you received non-judicial punishment (NJP) for violation of Uniform Code of Military Justice (UCMJ) Article 86, for unauthorized absence (UA) from your appointed place of duty and, Article 128, for assault of a shipmate. On 19 March 1992, you were found guilty at your second NJP for violation of Article 86, for a two day period of UA. On 17 September 1992,

you were found guilty at your third NJP for violation of Article 86, for a ten hour period of UA. On 14 January 1993, you were found guilty at your fourth NJP for violation of Article 86, for a nine day period of UA. You did not appeal any of these NJPs.

On 16 March 1993, you underwent a medical evaluation wherein the provider found “no evidence of thought disorder nor major affective disorder,” and recommended additional testing to rule out a personality disorder. On 12 April 1993, a follow-up exam indicated “severe personality disorder with avoidance and passive-aggressive features,” and you were recommended for administrative separation.

On 20 May 1993, you were found guilty at your fifth NJP, again for violating UCMJ Article 86, this time for a 14 day period of UA. You did not appeal this NJP. On 30 June 1993, you were notified that you were being processed for an administrative discharge by reason of pattern of misconduct. You waived your right to consult with qualified counsel and your right to present your case at an administrative separation board.

On 16 August 1993, you denied mental health symptoms and reported to be “in good health” on your separation physical. On 27 July 1993, you were discharged from the service for misconduct with an Other Than Honorable (OTH) characterization of service and assigned an RE- 4 reenlistment code.

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 mental health and medical issues, and (c) the impact of those health concerns on your conduct. For purposes of clemency and equity consideration, the Board noted 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, as well as other mental health and medical concerns, during military service which might have mitigated your discharge character of service. You explain that you informed your command about your mental health issues, but that you were not provided the support you needed. You explain that your PTSD stemmed from your service related to the eruption of Mount Pinatubo in June 1991, and that “PTSD caused [you] to make bad decisions in and out of the Navy, thoughts of suicide, no sleep, bad dreams of volcanic ash, people burning, violent outburst.” 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 8 February 2023. The Ph.D. noted in pertinent part:

Petitioner was appropriately referred for psychological evaluation and properly evaluated during his enlistment. His personality disorder diagnosis was based on observed behaviors and performance during his period of service, the information he chose to disclose, and the psychological evaluation performed by the mental health clinician. A personality disorder diagnosis is pre-existing to military service by definition, and indicates lifelong characterological traits unsuitable for military service. Unfortunately, he has provided no medical evidence to support his claims. While the VA has noted a diagnosis of PTSD that is temporally remote

to military service, it is not service-connected. His in-service misconduct appears to be consistent with his diagnosed personality disorder, rather than evidence of PTSD or another mental health condition incurred in or exacerbated by military service. 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 Ph.D. concluded, "it is my clinical opinion there is insufficient evidence of a diagnosis of PTSD that may be attributed to military service. There is insufficient evidence to attribute his misconduct to PTSD."

On 7 March 2023, you provided a response to the AO, arguing that your participation in Operation Fiery Vigil is evidence of your service connected PTSD. You assert that you were misdiagnosed with personality disorder rather than an accurate PTSD diagnosis. You also highlight that the AO failed to address that you also witnessed a friend commit suicide that same year (1991). You explain that you had no preexisting conditions, therefore your mental health issues were service connected. You provided additional medical documentation in support of your arguments. On 14 March 2023, the Ph.D. reviewed your additional documents, to include the Disability Benefits Questionnaire, which stated that it is "less likely than not that PTSD connected to assisting with Mt. Pinatubo aftermath." The Ph.D. found no evidence of error in the in-service personality disorder diagnosis, which was conservative following multiple appointments. The original AO remained unchanged.

After thorough review, the Board concluded the potentially mitigating factors were insufficient to warrant relief. In accordance with the Kurta, Hagel, and Wilkie Memos, the Board gave liberal and special consideration to your record of service, and your contentions about your mental health concerns and the possible adverse impact on your service. However, the Board felt that your misconduct, as evidenced by your five NJPs, outweighed these mitigating factors. The Board considered the seriousness of your misconduct and the fact that you went UA for significant periods of time and that your misconduct began almost immediately after your enlistment and spanned your entire period of service. Further, the Board also considered the likely negative impact your conduct had on the good order and discipline of your command. The Board determined that your misconduct was contrary to Navy core values and policy and likely had a detrimental impact on mission accomplishment.

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 concluded that your post-service diagnosis of PTSD was temporally remote and did not adequately establish service connection or a nexus to your misconduct. The Board highlighted that you were still in training in San Diego on 15 June 1991, the date of the Mount Pinatubo eruption, and were still in training over a month later. The USS Arkansas was involved in the evacuation of military personnel, but nothing in the record indicated that it was involved in the disaster relief effort specific to search and rescue or rendering medical aid. Due to a lack of nexus between your post-service diagnosis and your in-service misconduct, the Board concluded that your misconduct was not due to mental health-related symptoms. The Board found that your active duty 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 otherwise not be held accountable for your actions. As a result, the Board determined your conduct constituted a significant departure from that expected of a service member 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. After applying liberal consideration, the Board did not find evidence of an error or injustice that warrants upgrading your characterization of service or granting clemency in the form of an upgraded characterization of service. 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,

4/12/2023

