



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. 8808-22
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 17 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.

You enlisted in the Navy and began a period of active duty on 22 January 1990. On 27 July 1990, your commanding officer (CO) referred you for a mental health evaluation in which diagnosed you with alcohol abuse, episodic, and paranoid and avoidant personality traits.

On 1 March 1992, you commenced a period of unauthorized absence (UA) that concluded upon your surrender to military authorities on 16 March 1992, a period totaling 15 days. On 25 March 1992, you received non-judicial punishment (NJP) for UA. Additionally, you were issued an

administrative remarks (Page 13) counseling concerning deficiencies in your performance and conduct. You were advised that any further deficiencies in your performance and/or conduct may result in disciplinary action and in processing for administrative separation.

On 8 May 1992, you commenced another period of UA that concluded upon your surrender to military authorities on 9 July 1992, a period totaling 62 days. During the period from 10 July 1992 to 13 July 1992, you were evaluated and diagnosed with adjustment disorder with mixed features and personality disorder with antisocial, avoidant, and schizoid traits. You were found fit for duty, but not stable for retention due to severe personality disorder.

On 6 August 1992, you received a second NJP for two specifications of UA and five specifications of missing ship's movement. On 24 August 1992, you were advised of, and waived your procedural rights to consult with military counsel and to present your case to an administrative discharge board (ADB). Your commanding officer (CO) then forwarded your administrative separation package to the separation authority (SA) recommending your administrative discharge from the Navy with an Other Than Honorable (OTH) characterization of service. The SA approved the recommendation for administrative discharge and directed your OTH discharge from the Navy. On 9 October 1992, you were discharged from the Navy with an OTH characterization of service by reason of misconduct due to commission of a serious offense.

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 change your discharge character of service and your contentions that you were targeted and bullied by the ship's company, made poor choices based on your mental health issues and a toxic work environment, you did not feel safe discussing your concerns with your supervisors, you developed "extreme depression, suicidal thoughts and attempts, antisocial disorder, PTSD and schizoid personality disorder," you have spent the past three decades trying to live a normal life, and you have always strived to learn and grow from your experiences. For purposes of clemency and equity consideration, the Board noted you provided an advocacy letter but no supporting documentation describing post-service accomplishments.

As part of the Board's review, a qualified mental health professional reviewed your request and provided the Board with an AO on 31 January 2023. The AO noted in pertinent part:

Petitioner was appropriately referred for psychological evaluation during his enlistment and properly evaluated during an inpatient hospitalization. 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 evaluations 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 of PTSD. While he was also diagnosed with an Adjustment Disorder during military service, this diagnosis indicates that the Petitioner was experiencing difficulty in service, and typically

resolves after separation from service. 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 AO concluded, "it is my clinical opinion there is insufficient evidence of a diagnosis of PTSD. There is in-service evidence of mental health diagnoses of Adjustment Disorder and PDNOS. There is insufficient evidence his misconduct could be attributed to PTSD or a mental health condition, other than his in-service diagnosed personality disorder."

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 two NJPs, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and concluded your misconduct showed a complete disregard for military authority and regulations. The Board also considered the likely negative impact your conduct had on the good order and discipline of your command. Additionally, the Board concurred with the AO that there is insufficient evidence of a diagnosis of PTSD, and there is insufficient evidence your misconduct could be attributed to PTSD or a mental health condition, other than your in-service diagnosed personality disorder adjustment disorder. As the AO noted, your in-service misconduct appears to be consistent with your diagnosed personality disorder, rather than evidence of PTSD or another mental health condition incurred in or exacerbated by military service. As a result, the Board concluded your conduct constituted a significant departure from that expected of a service member and continues to warrant an OTH characterization. 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 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,

4/3/2023

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Executive Director

Signed by: ■