



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

██████████
Docket No. 9047-22
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 12 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 the advisory opinion (AO) furnished by a qualified mental health provider, 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 U.S. Navy and entered active duty on 16 May 2006. Your pre-enlistment physical examination, on 14 October 2005, and self-reported medical history both noted no psychiatric or neurologic conditions or symptoms.

On 3 January 2007, you commenced an unauthorized absence (UA) that terminated when you returned to military authority on 4 January 2007. On 12 February 2007, you commenced another UA. While in a UA status you missed your ship's movement on 28 February 2007. On 14 March 2007, your command declared you to be a deserter. On 2 May 2007, civilian authorities in ██████████ ██████████ arrested you and held you in their custody. On 4 June 2007 your UA finally terminated after 112 days with your return to military authorities.

On 19 July 2007, 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 waived your rights to consult with counsel, submit statements, and to request an administrative separation board. In the interim, your separation physical examination, on 16 August 2007, indicated you were physically qualified for separation.

On 17 August 2007, you received non-judicial punishment (NJP) for your 112-day UA. You did not appeal your NJP. Ultimately, on 23 August 2007, you were discharged from the Navy for misconduct with an under other than honorable conditions (OTH) characterization of service and assigned an 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 Hagel, Kurta, and Wilkie Memos. These included, but were not limited to, your desire for a discharge upgrade and contentions that: (a) you served a majority of your enlistment with great conduct, and (b) you were allowed leave during a family emergency following your mother's stroke, and then your command accused you of being AWOL because you didn't make it back before your ship left. For purposes of clemency and equity consideration, the Board noted you did not provide documentation describing post-service accomplishments or advocacy letters.

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 16 March 2023. The Ph.D. stated in pertinent part:

During military service, the Petitioner reported he was diagnosed with a mental health condition. He has provided no additional medical evidence in support of his claims. Unfortunately, the available records are not sufficiently detailed to establish a nexus with his misconduct, as there is insufficient information regarding his symptoms and onset, and it is difficult to attribute his extended UA to a purported mental health condition. There is insufficient evidence of a diagnosis of PTSD, particularly given his current statement that his misconduct was due to personal stressors associated with his mother's illness. 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 insufficient evidence of a diagnosis of PTSD that may be attributed to military service. There is some in-service evidence of a mental health condition that may be attributed to military service. There is insufficient evidence to attribute his misconduct to PTSD or another 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 purported 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 forming the basis of your discharge. As a result, the Board concluded that your serious 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 also noted that you did not provide any convincing evidence that your command authorized you to be on leave at any time during your 112-day UA. The Board determined the record reflected that your misconduct was intentional and willful and demonstrated you were unfit for further service. The Board also concluded 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 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. The simple fact remains is that you left the Navy while you were still contractually obligated to serve and went into a UA status without any legal justification or excuse for approximately 112 days. 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 liberally and 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,

5/17/2023

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Deputy Director

Signed by: █