



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. 9235-22

Ref: Signature Date

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Dear █

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 24 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 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 along with your response to the AO.

You enlisted in the United States Navy and commenced a period of service on 5 March 1986. On 9 October 1986, you were referred by command for evaluation regarding your fitness for duty. Although the medical provider reported that your insight and judgement was poor, it was determined that you were responsible and accountable for your actions and that you were fit for duty. You were referred for evaluation by a mental health provider related to adjustment in Navy. On 29 October 1986, the mental health provider diagnosed you with adjustment disorder and mixed personality disorder. You were again determined to be fit for full duty.

On 31 October 1986, you received non-judicial punishment (NJP) for violation of Uniform Code of Military Justice (UCMJ) Article 117, for provoking speeches and gestures. You did not appeal this NJP. You were given a Page 13 Administrative Counseling and again referred for mental

health evaluation. On 11 December 1986, you were diagnosed with disturbed conduct and mixed personality disorder.

On 20 April 1987, you were referred for emergency medical evaluation by your command after assaulting two individuals. You were mentally responsive and admitted for evaluation. The physician noted “mixed disturbance of conduct and emotions” and “mixed personality disorder and passive aggressive feelings.” You were diagnosed with mixed personality disorder with antisocial passive aggressive features. On 21 April 1987, you were discharged to duty, although it was determined that you were unsuitable for further military service.

On 29 April 1987, you received your second NJP for violating UCMJ Article 91, for disobedience, and Article 128, for two specifications of assault as noted above. You did not appeal this NJP. On 30 April 1987, your command initiated administrative separation proceedings by reason of misconduct due to commission of a serious offense. You waived your right to consult with qualified counsel and your right to an administrative separation board. On 29 May 1987, you were discharged from the Navy with an Other Than Honorable (OTH) characterization of service and assigned an RE-4 reenlistment code.

You previously submitted an application to the Navy Discharge Review Board and were denied relief in 1988. You submitted your case for review by this Board and were denied relief on 24 August 1999.

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, (b) your contention that you were struggling with undiagnosed mental health issues that were misdiagnosed as a personality disorder, and (c) the impact that your mental health had on your conduct during service. For purposes of clemency and equity consideration, the Board considered the evidence you submitted in support of your application.

In your request for relief, you claim that you were misdiagnosed with a “Personality Disorder” while in the service, which was correctly diagnosed post-service as a “Psychotic Disorder.” You assert that your mental health condition contributed to your misconduct and you should therefore be granted relief. You provided numerous post-service medical documents in support of your contentions. 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 7 March 2023. The Ph.D. noted in pertinent part:

Petitioner was appropriately referred for psychological evaluation and properly evaluated on multiple occasions 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. Shortly following his separation from service, the SSA provided services for diagnoses of personality disorder and cognitive impairment. More recently, the Petitioner has received treatment for a psychotic disorder that is temporally remote to his military service and appears

unrelated. Additional records (e.g., post-service mental health records describing the Petitioner's diagnosis, symptoms, and their specific link to his military service) may aid in rendering an alternate opinion.

The Ph.D. concluded, "it is my clinical opinion there is insufficient evidence of a mental health condition that may be attributed to military service. There is insufficient evidence to attribute the circumstances of his separation to a mental health condition, other than his diagnosed personality disorder."

In response to the AO, you submitted a personal statement that provided further arguments in support of your application. After reviewing your response, the 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 mental health and the possible adverse impact your mental health had on your conduct during service. Specifically, the Board felt that your misconduct, as evidenced by your two NJPs, outweighed these mitigating factors. The Board considered the seriousness of your misconduct and the fact that it involved two instances of assault. 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 such misconduct is contrary to the Navy's core values and policy, renders such Sailor unfit for duty, and poses an unnecessary risk to the safety of fellow service members.

In making this determination, the Board concurred with the advisory opinion that your in-service diagnosis of "personality Disorder" was corrected issued based on your behavior during service, the information you chose to disclose, and the psychological evaluation performed by the mental health clinician. Your post-service diagnoses of personality disorder and cognitive impairment were issued almost immediately after your discharge and were consistent with your in-service diagnoses. Your treatment for a psychotic disorder is temporally remote to your military service and appears unrelated to your service. Throughout the disciplinary process, you did not raise any concerns related to mental health that could have been reviewed or considered in mitigation. The Board concluded that your misconduct was not due to mental health-related symptoms, rather, was intentional and demonstrated you were unfit for further service. As a result, the Board determined your conduct constituted a significant departure from that expected of a Sailor 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 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,

5/2/2023

