



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

█
Docket No. 1847-23
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 27 October 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, you chose not to do so.

You enlisted in the U.S. Navy and began a period of active duty service on 15 March 1990. Your enlistment physical examination, on 3 April 1990, and self-reported medical history both noted no psychiatric or neurologic conditions or symptoms. On 1 October 1991, you reported for duty on board the █.

On 16 July 1992, you commenced a period of unauthorized absence (UA). On 17 August 1992, your command declared you to be a deserter. Your UA terminated after forty (40) days with your arrest on 25 August 1992.

On 16 September 1992, you received non-judicial punishment (NJP) for your 40-day UA. You did not appeal your NJP.

On 22 September 1992, you underwent a psychiatric evaluation and were diagnosed with a personality disorder not otherwise specified with avoidant and passive-aggressive traits. The Navy Medical Officer recommended your expeditious administrative discharge.

On 28 September 1992, you were notified that you were being processed for an administrative discharge by reason of misconduct due to the commission of a serious offense, and for the convenience of the government on the basis of your diagnosed personality disorder. You waived your rights to consult with counsel, submit a statement, and to request a hearing before an administrative separation board. On 13 October 1992 your commanding officer (CO) recommended to the Separation Authority that you be administratively separated with a discharge characterization as warranted by your service. In his endorsement, your CO stated:

Petty Officer Cook has been a substandard performer since his arrival in █. Though he is competent technician, he is unable to work without close supervision and cannot be relied upon to perform in the stressful environment of shipboard life. Following his nonjudicial punishment for unauthorized absence, Petty Officer Cook reported to sickbay, claiming he was depressed and felt like hurting himself. He was sent to the █ for psychiatric evaluation and found to suffering form [sic] an unspecified personality disorder with suicidal ideation and alcohol abuse. It is apparent that Petty Officer Cook has no desire to be in the Navy and has no potential for further useful service. Administrative separation, with characterization as warranted by service, is strongly recommended.

Ultimately, on 29 October 1992, you were discharged from the Navy for misconduct with a General (Under Honorable Conditions) (GEN) 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 Kurta, Hagel, and Wilkie Memos. These included, but were not limited to, your desire for a discharge upgrade and contentions that: (a) you are requesting a discharge upgrade for your peace of mind, (b) your undiagnosed personality disorder was not taken into account regarding your actions prior to discharge, and it seemed your command only considered it to be a future problem and not a cause for your poor judgement and actions, (c) you were diagnosed with a personality disorder by a Navy Psychiatrist and you believe that in and of itself deserves at least a consideration for review, (d) you have since overcome your overindulgence of alcohol, have been diagnosed with general anxiety disorder, and have been on anxiety medications for over a decade, (e) your decision to leave without authorization was influenced by your inability to deal with the anxiety you suffer from without medication, and (f) exemplary post-service conduct. For purposes of clemency and equity consideration, the Board considered the entirety of the evidence you provided in support of your application.

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 12 September 2023. The Ph.D. stated in pertinent part:

The Petitioner contends that he was diagnosed with and treated for Generalized Anxiety Disorder and Depression post-service, and he believes that he was suffering from these conditions that were mistakenly diagnosed for personality disorder while in service. He was appropriately referred for psychological evaluation during his enlistment and properly evaluated during a psychiatric evaluation when he returned from 38 days UA. His personality disorder diagnosis was based on observed behaviors and performance during his period of service, the information he chose to disclose to the mental health clinician, 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, since they are not typically amenable to treatment within the operational requirements of Naval Service. Unfortunately, he has provided no medical evidence to support his claims that he was suffering from anxiety and depression during service. His personal statement is not sufficiently detailed to establish clinical symptoms or provide a nexus with his misconduct. Additional records (e.g., post-service mental health records describing the Petitioner's diagnosis, symptoms, and their specific link to his misconduct) would aid in rendering an alternate opinion.

The Ph.D. concluded, "it is my considered clinical opinion there is insufficient evidence of a mental health condition that may be attributed to military service. 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 Kurta, Hagel, 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 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, even under the liberal consideration standard the Board concluded that your misconduct was not due to mental health-related conditions or symptoms. 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 concluded 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.

The Board noted that personality disorders are characterized by a longstanding pattern of unhealthy behaviors, dysfunctional relationships, and maladaptive thinking patterns. They are

not conditions considered unfitting or disabling, but render service members unsuitable for military service and consideration for administrative separation. Accordingly, the Board concluded that your antisocial personality disorder was a non-disabling disorder of character and behavior, and that it should not be considered a mitigating factor in your misconduct because it did not impair your ability to be accountable for your actions or behaviors. The Board also determined the record clearly reflected that your misconduct was intentional and demonstrated you were unfit for further service.

The Board did not believe that your record was otherwise so meritorious as to deserve a discharge upgrade to Honorable. The Board concluded that significant negative aspects of your conduct and/or performance greatly outweighed any positive aspects of your military record. The Board noted that, although one's service is generally characterized at the time of discharge based on performance and conduct throughout the entire enlistment, the conduct or performance of duty reflected by only a single incident of misconduct may provide the underlying basis for discharge characterization. The Board determined that characterization either under Other Than Honorable conditions or GEN 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. As a result, the Board determined that there was no impropriety or inequity in your discharge and concluded that your misconduct and disregard for good order in discipline clearly merited your discharge. While the Board carefully considered the evidence you submitted in mitigation, even in light of the Kurta, Hagel, and Wilkie Memos 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. 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,

11/1/2023

