



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

█
Docket No. 2143-23

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 initial 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 7 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 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 considered an advisory opinion (AO) from a qualified mental health provider drafted for one of your previous BCNR petitions (NR20200005957) which was previously provided to you in late April 2021. Although you were provided an opportunity to submit an AO rebuttal at such time, you chose not to do so.

You enlisted in the U.S. Navy and entered active duty on 11 February 1989. Your pre-enlistment physical examination, on 7 December 1988, and self-reported medical history both noted no psychiatric or neurologic conditions or symptoms. On 28 August 1989, you reported for duty on board the █

On 22 February 1990, you received non-judicial punishment (NJP) for two separate specifications of unauthorized absence (UA). You did not appeal your NJP. On 7 June 1990, you received NJP for two separate specifications of UA lasting fifteen days and one day, respectively. You did not appeal your second NJP. On the same day, your command issued you a "Page 13" retention warning (Page 13) documenting your multiple absences. The Page 13 expressly warned you that any further deficiencies in your performance and/or conduct may result in disciplinary action and in the processing for administrative discharge.

However, on 11 July 1991, you received NJP for making a false official statement, making/uttering checks with insufficient funds amounting to approximately \$1,125.00, and for five separate UA specifications, two of which lasted eight days and five days, respectively. You did not appeal your third NJP.

On 17 July 1991, your command notified you that you were being processed for an administrative discharge by reason of misconduct due to a pattern of misconduct. You consulted with counsel and elected your right to present your case to an administrative separation board (Adsep Board).

On 9 August 1991, an Adsep Board convened to hear your case. At the Adsep Board, you were represented by military counsel. Following the presentation of evidence and witness testimony, the Adsep Board members unanimously determined that you committed misconduct as charged. Subsequent to the misconduct finding, the Adsep Board members unanimously recommended that you be separated from the naval service with an under Other Than Honorable conditions (OTH) characterization of service. Ultimately, on 30 September 1991, you were discharged from the Navy for misconduct with an OTH characterization of service and assigned an RE-4 reentry code.

On 16 January 2003, the Naval Discharge Review Board determined that your OTH discharge was proper as issued and no change was warranted. On 19 October 2004, this Board denied your initial petition for relief. On 8 April 2019, the BCNR denied your second petition for relief. On 11 June 2021, this Board denied your third petition for relief, that included the aforementioned AO. On 23 September 2022, this Board denied your fourth petition for relief. On 30 January 2023, your fifth petition for relief was administratively closed because you did not provide any new evidence not previously considered by the Board.

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 made young and irrational decisions and take full responsibility for your actions but need your discharge upgraded, (b) you went through a traumatic time on board the █ when fellow shipmates were killed and you lost your grandmother which created some PTSD issues, and (c) you fought alongside your shipmates in Operation Desert Storm and you have suffered not having benefits that you earned. For purposes of clemency and equity consideration, the Board noted you did not provide supporting documentation describing post-service accomplishments, and that you provided the same three advocacy letters from

previous petitions, albeit with dates removed. The Board also noted that the only new evidence you submitted was a brief email from a shipmate of yours on board the ██████████. Moreover, the Board further noted that you did not provide any new and/or material medical or clinical evidence that was not already included in your previous petitions. The Board specifically observed that you resubmitted a letter from ██████████ at Behavior Consultants, originally dated 17 April 2020, with the date conspicuously removed.

As part of the review process, the BCNR Physician Advisor who is also a medical doctor (MD) and a Fellow of the American Psychiatric Association, reviewed your mental health contentions and the available records and issued an AO dated 16 April 2021. The Board noted that this AO was drafted for a previous BCNR petition. However, while you are claiming again you suffered from PTSD on active duty on your current petition, the Board noted that you did not provide any new and/or material medical or clinical evidence whatsoever that was not already included in your previous petitions. Accordingly, the Board reviewed the April 2021 AO. The MD stated in pertinent part:

Petitioner's in-service records did not contain evidence of a diagnosis of a mental health condition or psychological/behavioral changes, which may have indicated a mental health condition. Throughout his disciplinary actions, counselings, review boards, and administrative processing, there were no concerns noted which would have warranted referral to mental health resources. Although Petitioner provided evidence of a post-discharge diagnosis of PTSD, there was no report of specific traumatic events from military or wartime experiences. Notably, of his three misconducts, two occurred before his deployment to ██████████ and were not attributable to his contention of PTSD. During his ADRB, Petitioner stated his two misconduct UA's that were part of his charges during his 11 July 1991 NJP, were attributed to his leaving on previously approved leave without a leave control number, and on the other UA, he left because he was "stressing out" over being in a "financial bind." The lack of information on the actual traumatic events and onset and development of mental health symptoms made it difficult to identify a nexus with his in-service misconduct.

The MD concluded, "it is my considered medical opinion that though Petitioner carries a post-discharge diagnosis of PTSD, the preponderance of objective evidence fails to establish that Petitioner suffered from PTSD at the time of his military service, or that his in-service misconduct could be attributed to PTSD or other mental health conditions."

After thorough review the Board concluded these potentially mitigating factors were again 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 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,

the Board concluded that your 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 cumulative pattern of misconduct outweighed any and all mitigation offered by such mental health conditions. The Board determined the record reflected that your 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 not be held accountable for your actions.

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. 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. Moreover, absent a material error or injustice, the Board declined to summarily upgrade a discharge solely for the purpose of facilitating veterans' benefits, or enhancing educational or employment opportunities. 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 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.

Including this petition, you have now attempted on no less than six (6) occasions at the BCNR to upgrade your discharge without success. Your contentions and proffered supporting evidence have largely remained unchanged for each of your previous petitions, the Board has liberally considered any and all of your purported mental health contentions as described in your last four (4) petitions, and the Board has declined to grant clemency even in light of Wilkie Memo considerations. Unfortunately, at this time the decision of the Board now is final, and your only future recourse would be to seek relief, at no cost to the Board, from a court of appropriate jurisdiction.

Sincerely,

4/11/2023

