



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. 2867-23

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 8 December 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 professional. Although you were afforded an opportunity to submit an AO rebuttal, you chose not to do so.

The Board determined that your personal appearance, with or without counsel, would not materially add to their understanding of the issues involved. Therefore, the Board determined that a personal appearance was not necessary and considered your case based on the evidence of record.

You enlisted in the U.S. Navy and began a period of active duty service on 21 July 1992. Your enlistment physical examination, on 17 March 1992, and self-reported medical history both

noted no psychiatric or neurologic conditions or symptoms. On 28 December 1992, you reported for duty on board the ██████████ in ██████████.

After being stationed on the ship for only a mere ten (10) days, on 7 January 1993, you commenced a period of unauthorized absence (UA). While in a UA status, you missed ship's movement on both 8 January 1993 and, again, on 11 January 1993. Your UA terminated, after twenty-three (23) days, with your surrender to military authorities at ██████████ near ██████████ on 30 January 1993.

On 3 February 1993, you underwent a psychiatric evaluation and were diagnosed with a personality disorder, not otherwise specified, with histrionic and self-defeating features. The Navy Medical Officer (NMO) recommended your expeditious administrative discharge. The NMO specifically noted:

The member is not considered mentally ill, but manifests a longstanding disorder of character and behavior which is of such severity as to render the individual incapable of serving adequately in the Navy. The member does not presently require, and will not benefit from (further) hospitalization or psychiatric treatment. Although the member is not presently considered suicidal or homicidal, [s]he is judged to represent a continuing danger to self or others if retained in the naval service. The member is deemed fit for return to duty for immediate processing for administrative separation, which should be initiated expeditiously by her command.

On 1 March 1993, you commenced another period of UA. Your UA terminated after four (4) days, on 5 March 1993, with your surrender to military authorities. On 24 March 1993, you received non-judicial punishment (NJP) for your two separate UA periods, missing ship's movement by design, failing to obey a lawful order, and two separate specifications of the wrongful use of a controlled substance. You did not appeal your NJP.

On 31 March 1993, you were notified that you were being processed for an administrative discharge by reason of misconduct due to the commission of a serious offense, misconduct due to drug abuse, 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 31 March 1993, you also separately waived your right to participate in a drug/alcohol rehabilitation program prior to your discharge.

In the interim, your separation physical examination noted no neurologic or psychiatric conditions or symptoms, but did note a history of a personality disorder. Ultimately, on 27 April 1993, after serving for less than ten (10) months of active duty service, 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 Kurta, Hagel, and Wilkie

Memos. These included, but were not limited to, your desire for a discharge upgrade and contentions that: (a) at that time in your life you were a closet gay and were under tremendous stress hiding your sexuality, (b) you were traumatized about going out to sea and having your secret discovered, (c) during interviews with your NMO, you once admitted to her that you did not wish to return to your ship because you would jump overboard, and (d) you were unaware at the time, but you now realize you were suffering from PTSD. 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 13 October 2023. The Ph.D. stated in pertinent part:

Petitioner was appropriately referred for psychological evaluation during her enlistment and properly evaluated on multiple occasions. Her personality disorder diagnosis was based on observed behaviors and performance during her period of service, the information she chose to disclose, and the psychological evaluation performed by the mental health clinician. She has provided no medical evidence in support of her claims. Her in-service misconduct appears to be consistent with her 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 her 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 or another mental health condition that may be attributed to military service. There is insufficient evidence to attribute her misconduct to PTSD or another mental health condition, other than her diagnosed personality disorder."

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 diagnosed 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 determined that illegal drug use is contrary to Navy core values and policy, renders such service members unfit for duty, and poses an unnecessary risk to the safety of their fellow Sailors. 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. 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. 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. 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,

12/13/2023

