



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. 3406-23

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 15 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 and your response to the AO.

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 17 April 2000. Your pre-enlistment physical examination, on 30 March 2000, and self-reported medical history both noted no psychiatric or neurologic issues or symptoms. As part of your enlistment application,

on your self-reported medical history, you specifically denied ever having: (a) attempting suicide, (b) being treated for a mental condition, and (c) being a patient in any type of hospital.

On 15 August 2000, you received non-judicial punishment (NJP) for insubordinate conduct and failing to obey a lawful order. You did not appeal your NJP. On the same day, your command issued you a "Page 13" retention warning (Page 13) documenting your NJP. The Page 13 warned you that any further deficiencies in performance and/or conduct may result in disciplinary action and processing for administrative action.

On 24 August 2000, you underwent a psychiatric evaluation. During the evaluation, you disclosed to the Medical Officer, contrary to what you represented on your enlistment application, that you attempted suicide at age 16, saw a psychiatrist at age 16 and were prescribed Zoloft, and following the suicide attempt you were hospitalized for two days and placed in weekly therapy for two months. The Medical Officer diagnosed you with a "personality disorder, not otherwise specified, with antisocial features, existed prior to entry."

On 31 October 2000, you received NJP for unauthorized absence (UA), disorderly conduct/drunkenness, and failing to obey a lawful order or regulation. You did not appeal your NJP. On 6 November 2000, your command issued you a Page 13 informing you that any further deficiencies in performance and/or conduct may result in disciplinary action and processing for administrative action.

On 5 July 2001, you received NJP for UA. You did not appeal your NJP. On the same day, your command issued you a Page 13 informing you that any further deficiencies in performance and/or conduct may result in disciplinary action and processing for administrative action. On 2 September 2001, your command issued you a Page 13 documenting a violation of your ADP user agreement by storing inappropriate material on a government computer. The Page 13 warned you that any further deficiencies in performance and/or conduct may result in disciplinary action and permanent revocation of LAN account, email, and internet access.

On 28 November 2001, you were disenrolled from Level III alcohol rehabilitation aftercare program for the continued use of alcohol following your involvement in an alcohol-related domestic abuse incident on 15 November 2001.

On 8 January 2003, you received NJP for indecent exposure during a liberty incident in an overseas port. You did not appeal your NJP.

On 9 January 2003, 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, misconduct due to a pattern of misconduct, and alcohol abuse rehabilitation failure. You consulted with counsel and, on 13 January 2003, you waived your right to request a hearing before an administrative separation board. Ultimately, on 4 February 2003, 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.

On 16 October 2008, the Naval Discharge Review Board denied your initial application for discharge upgrade relief.

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) while on active duty, you attempted multiple times to seek psychological assistance but were unable to get reasonable help, (b) post-service you received a diagnosis for your current medical condition, and (c) you believe your OTH discharge was due to your mental health injury on active duty, along with self-medication due to the undiagnosed condition, and the lack of mental health assistance. For purposes of clemency and equity consideration, the Board considered 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 23 October 2023. The Ph.D. stated in pertinent part:

Petitioner was appropriately referred for psychological evaluation during his enlistment and properly evaluated over multiple appointments and years. 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 evaluations performed by the mental health clinicians. Post-service, he has provided evidence from civilian providers of a diagnosis of Bipolar Disorder that is temporally remote to his military service and appears unrelated. His in-service misconduct appears to be consistent with his diagnosed personality disorder, rather than evidence of 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 his misconduct) 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 his misconduct to a mental health condition experienced during military service, other than his diagnosed personality disorder."

Following a review of your AO rebuttal submission, the Ph.D. opined that there was insufficient evidence to attribute your misconduct to a mental health condition, other than alcohol use disorder.

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 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 misconduct far outweighed any and all mitigation offered by such mental health conditions. 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.

Additionally, the Board noted that a fraudulent enlistment occurs when there has been deliberate material misrepresentation, including the omission or concealment of facts which, if known at the time, would have reasonably been expected to preclude, postpone, or otherwise affect a Sailor's eligibility for enlistment. The Board determined that you had a legal, moral, and ethical obligation to remain truthful on your enlistment paperwork. The Board concluded that had you properly and fully disclosed your pre-service suicide attempt and the extent of your complete mental health history you would likely have been disqualified from enlisting in the Navy.

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 observed that character of military service is based, in part, on conduct and overall trait averages which are computed from marks assigned during periodic evaluations. Your overall active duty trait average calculated from your available performance evaluations during your enlistment was approximately 2.0 in conduct. Navy regulations in place at the time of your discharge recommended a minimum trait average of 2.5 in conduct (proper military behavior), for a fully honorable characterization of service. The Board concluded that your conduct marks during your active duty career were a direct result of your pattern of serious misconduct which further justified your OTH discharge characterization.

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. 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 OTH characterization. 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,

12/19/2023

