



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. 3422-23

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 3 November 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 the advisory opinion (AO) furnished by a 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 10 February 1993. Your pre-enlistment physical examination, on 8 January 1993, and self-reported medical history both noted no psychiatric or neurologic conditions or symptoms.

On 6 January 1994, you commenced a period of unauthorized absence (UA). Your UA terminated after twenty-five (25) days on 31 January 1994. On 11 February 1994, you received non-judicial punishment (NJP) for your 25-day UA. 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 expressly advised you that any further deficiencies in performance and/or conduct may result in disciplinary action and in processing for administrative discharge.

On 21 April 1994, you reported for duty on board the ██████████. However, on 15 May 1994, you commenced another UA. Your command declared you to be a deserter on 14 June 1994. Your UA terminated after fifty-three (53) days, on 7 July 1994, with your surrender to military authorities.

On 17 August 1994, you commenced another UA. Your command declared you to be a deserter on 19 September 1994. Your UA terminated after approximately 269 days, on 13 May 1995, with your arrest by civilian authorities in or near ██████████.

Following your return to military control, you submitted a voluntary written request for an administrative discharge for the good of the service under Other Than Honorable conditions (OTH) to avoid trial by court-martial for your two long-term UAs. As a result of this course of action, you were spared the stigma of a court-martial conviction for your multiple UAs, as well as the potential sentence of confinement and the negative ramifications of receiving a punitive discharge from a military judge. Ultimately, on 27 July 1995, you were separated from the Navy in lieu of a trial by court-martial with an OTH discharge characterization 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 Hagel, Kurta, and Wilkie Memos. These included, but were not limited to, your desire for a discharge upgrade and contentions that: (a) you suffered mental and physical trauma on active duty and those events caused your PTSD that was not properly diagnosed or treated while you were in the service and ultimately led to your discharge, (b) during a training operation you were shot in your left side which hit your kidney and you also had shrapnel in your right shin, (c) during that same “op,” you lost your brother, (d) your transfer to a boat instead of your previous assignment work caused much anger and resentment toward the Navy, (e) following your injuries you exhibited angry behaviors not previously part of your character, and (f) post-service you have received treatment for your 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 12 September 2023. The Ph.D. stated in pertinent part:

There is no evidence that he was diagnosed with a mental health condition in military service. Post-service, he has received mental health treatment from a civilian provider that is temporally remote to his military service and appears unrelated. Unfortunately, the available records are not sufficiently detailed to establish clinical symptoms in service or provide a nexus with his misconduct. Additional records (e.g., complete 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 diagnosis of PTSD that may be attributed to military service. There is insufficient evidence to attribute his misconduct to PTSD or another mental health condition."

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 purported 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 forming the basis of your discharge. As a result, the Board concluded that your serious 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 determined the record reflected that your misconduct was intentional and willful and demonstrated you were unfit for further service. 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 not be held accountable for your actions.

The Board determined that you did not provide any convincing evidence you suffered either a gunshot or shrapnel wound. Based on your personal statement, your purported injuries would have occurred while you were still in the initial training pipeline and before you reported to the ██████████. The Board determined that any such injuries, given your enlisted rate and responsibilities as a sonar technician and your "A" school training curriculum in ██████████ would have been extremely unlikely. Moreover, your available records do not substantiate your contention.

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 1.0 in conduct. Navy regulations in place at the time of your discharge recommended a minimum trait average of 2.0 in conduct (proper military behavior), for a fully honorable characterization of service. The Board concluded that your cumulative misconduct was not minor in nature and that your conduct marks during your active duty career were a direct result of your serious misconduct and further justified your OTH 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. The simple fact remains is that you left the Navy while you were still contractually obligated to serve and you went into a UA status without any legal justification or excuse on no less than two separate occasions totaling approximately 322 days. 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.

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,

11/7/2023

