



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. 4409-23
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 12 January 2024. 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 for consideration, 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 6 June 2002. Your pre-enlistment physical, on 29 May 2002, and self-reported medical history both noted no psychiatric or neurologic conditions or symptoms.

On 30 August 2002, your command issued you a “Page 13” counseling warning (Page 13). The Page 13 documented your refusal to participate in the PASS program. The Page 13 expressly warned you that any further deficiencies in performance and/or conduct may result in disciplinary action and in processing for administrative separation.

On 30 September 2002 your command issued you another Page 13 warning. The Page 13 documented your deficiencies in performance and/or conduct including your refusal to train, your refusal to swim qualify, your refusal to perform any physical training, and your refusal to participate in the CBR confidence chamber. The Page 13 expressly warned you that any further deficiencies in performance and/or conduct may result in disciplinary action and in processing for administrative separation.

On 8 October 2002 your leadership team completed a Recruit Evaluation Report (REP) documenting your refusal to train on several events. The REP specifically noted:

SN has repeatedly refused to train; he does not want to get swim qualified, do any PT test, complete confidence chamber at FFTU or pass bootcamp. RDC recommends RAB with ELS. SR [S] has been given every chance to obtain the necessary help and skills to successfully complete boot camp. He has willfully and intentionally refused to train, stating that he didn't see the “relevance” of numerous TRNG exerc. He has refused PASS, quit at it, and rejected everything and everyone connected to the Navy. He has done this deliberately since DOT 1-2. I recmd RAB with the ultimate end of CO's Mast. In addition I recmd an OTH discharge (or equivalent) if applicable.

On 15 October 2002, your command provided you notice that you were being administratively processed for an entry level separation (ELS) by reason of entry level performance and conduct. You elected in writing to waive your rights to consult with counsel, submit a written statement to the separation authority, and request a General Court-Martial Convening Authority review of your discharge. Ultimately, on 28 October 2002, you were discharged from the Navy with an uncharacterized ELS discharge given your brief length of service and assigned an RE-4 reentry code. In this regard, you were assigned the correct characterization and reentry code based on your factual situation at the time as you were still within your first 180 days of continuous military service and had not yet completed initial recruit training.

On 25 March 2022, this Board denied your initial petition for 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 an Honorable discharge and

contentions that: (a) the underlying basis of your separation was procedurally and substantively defective at the time of your discharge, (b) the adverse action was unfair based on equity considerations, (c) the discharge is inequitable now, (d) your discharge was unfair at the time and remains so now, and (e) you had no other issues or misconduct in basic training besides failing a swim test. For purposes of clemency and equity consideration, the Board considered the entirety of the evidence you provided in support of your application, which the Board noted was essentially the same submission as your previous petition.

As part of the Board review process for your previous petition, the BCNR Physician Advisor who is a licensed clinical psychologist (Ph.D.), reviewed your contentions and the available records and issued an AO dated 17 February 2022. The Ph.D. concluded by opining that the preponderance of available objective evidence failed to establish you suffered from a mental health condition on active duty that would have either contributed to the circumstances of your ELS, or mitigated your misconduct.

The Ph.D. reviewed your contentions and the available records again and issued an AO dated 20 November 2023 for your current petition. The Ph.D. stated in pertinent part:

There is no evidence that he was diagnosed with a mental health condition in military service, or that he exhibited any psychological symptoms or behavioral changes indicative of a diagnosable mental health condition. He has provided no medical evidence in support of his claims. Unfortunately, his personal statement is not sufficiently detailed to establish clinical symptoms in service or provide a nexus with his misconduct, which service records indicate was more substantial than simply refusal of the swim test. 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 the circumstances of his separation 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 convincing evidence that you suffered from any type of mental health condition while on active duty, or that any such mental health conditions or symptoms were related to or mitigated the behavior and misconduct that formed the basis of your discharge. As a result, the Board concluded that your overall substandard performance at boot camp was not due to mental health-related symptoms. Moreover, the Board observed that you did not submit any clinical documentation or treatment records to support your mental health claims despite a request from BCNR on 14 December 2021 to specifically provide additional documentary material. Even if the Board assumed that your behavior and misconduct was

somehow attributable to any mental health conditions, the Board concluded that the severity of your conduct in training far outweighed any and all mitigation offered by such mental health conditions. The Board determined the record clearly reflected that your behavior and misconduct were willful and intentional and demonstrated you were unfit for further Navy service.

The Board also determined that your contentions were without merit. The Board concluded that your behavior and conduct in basic training was a prima facie case for an ELS due to substandard performance and conduct. The Board further concluded your record, while in basic training, was consistently hallmarked by disobedience, malingering, a lack of motivation, and insubordination. You failed to meet basic Navy core values and displayed a total lack of character. 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.

Moreover, the Board noted that separations initiated within the first 180 days of continuous active duty will be described as ELS except when an Honorable discharge is approved by the Secretary of the Navy in cases involving unusual circumstances not applicable in your case. As a result, the Board determined that there was no impropriety or inequity in your discharge, and the Board concluded that your failure to train and disregard for good order and discipline clearly merited your ELS 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. Accordingly, given the totality of the circumstances, the Board determined that your request does not merit relief.

You have now attempted on two occasions to upgrade your discharge at the BCNR without success. With certain non-material exceptions, your contentions and proffered supporting evidence have largely remained unchanged for each of your petitions, and the Board has declined to grant clemency each time 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,

1/26/2024

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