



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. 5932-23
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.

Because your application was submitted with new evidence not previously considered, the Board found it in the interest of justice to review your application. A three-member panel of the Board, sitting in executive session, considered your application on 4 March 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 service record, and applicable statutes, regulations, and policies, to include the 25 August 2017 guidance from the Office of the Under Secretary of Defense for Personnel and Readiness (Kurta Memo), the 3 September 2014 guidance from the Secretary of Defense regarding discharge upgrade requests by Veterans claiming post-traumatic stress disorder (PTSD)/mental health condition (MHC) (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). The Board also considered an advisory opinion (AO) from a qualified mental health professional and your response to the AO.

You enlisted in the United States Navy and commenced a period of service on 11 December 1990. On 28 February 1992, you received non-judicial punishment (NJP) for violation of Uniform Code of Military Justice (UCMJ) Article 134, for disorderly conduct, and Article 108, for damaging government property. You were awarded 30 days in Correctional Custody (CCU) and reduction in rank (RIR) to DCFN/E-3. On 17 April 1992, you received your second NJP for violating UCMJ Article 134, for drunk and disorderly conduct, Article 128, for assaulting a petty officer by hitting him in the face, and Article 92, for disobeying a lawful order not to consume alcohol. You were awarded forfeitures of pay, 45 days restriction and extra duties, and RIR to DCFA/E-2. You did not appeal either NJP.

On 21 April 1992, you were notified that you were being processed for an administrative discharge by reason of misconduct, commission of a serious offense. After consulting with qualified counsel, you waived your right to present your case at an administrative separation board. Prior to your separation, you were arrested by civilian authorities and charged with being drunk in public. On 31 July 1992, you received your third NJP for violating UCMJ Article 134, for two specifications of disorderly conduct and drinking underage. On 10 August 1992, you acknowledged that the command was moving forward with your administrative processing and, as part of that process, you were medically screened and diagnosed as “alcohol dependent.” You were offered in-patient alcohol treatment through the Department of Veterans Affairs (VA) prior to separation, but you declined. On 11 August 1992, you were also referred to a Level I Navy alcohol treatment program and again declined to participate.

On 12 August 1992, your Commanding Officer recommended your separation from the service to the Chief of Naval Personnel (PERS-83), stating that “[a]lthough an effective worker onboard ship, [Petitioner’s] liberty performance continues to drastically decline. He was sent to CCU in the hope that he could turn around his problems and remain a useful member of this command. Unfortunately, his later unprovoked assault on one of his shipmates proves to me that he does not belong in the Navy.” On 16 December 1992, you were discharged from the Navy due to your misconduct with an Other Than Honorable (OTH) characterization of service and assigned an RE-4 reentry code.

You previously submitted an application to the Naval Discharge Review Board and were denied relief on 11 March 2003. You also previously petitioned this Board for relief and were denied on 29 September 2016, 15 August 2019, and 29 April 2022.

The Board carefully considered all potentially mitigating and/or extenuating 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: (a) your desire to upgrade your characterization of service and change your narrative reason for separation and reentry code, (b) your contention that you were suffering from undiagnosed mental health issues during your service, (c) your assertion that you receiving treatment while in CCU but never received a mental health exam prior to discharge, and (d) the impact that your mental health had on your conduct. For purposes of clemency and equity consideration, the Board noted that you did not provide documentation related to your post-service accomplishments or character letters.

In your request for relief, you contend that you incurred mental health concerns during military service due to stressors associated with your service onboard the █ during the Gulf War (Desert Storm), as well as exposure to other traumatic triggers. 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 22 January 2024. The Ph.D. noted in pertinent part:

The Petitioner submitted Disability Benefits Questionnaire (DBQ) from the VA indicating a diagnosis of PTSD and corroboration that the Petitioner met criteria for the definition of insanity at the time he committed his offenses. He also submitted two psychological evaluations that both note that he met criteria for “insanity”

during the time of his offenses. The DBQ does not elaborate on the specific traumatic events that the Petitioner reportedly experienced while in the Navy. Although it is possible that the Petitioner does meet criteria for a PTSD diagnosis, it is difficult to determine without sufficient detail regarding traumatic experiences. Furthermore, it appears as though all of the Petitioner's misconduct revolved around alcohol abuse and significant alcohol consumption. Insanity does account for the fact that he reportedly performed well while on duty, and that his misconduct occurred when intoxicated and while on liberty.

There is no evidence that the Petitioner was diagnosed with a mental health condition while in military service other than alcohol abuse, or that he exhibited any psychological symptoms or behavioral changes indicative of a diagnosable mental health condition. He submitted evidence of a post-service diagnosis of PTSD; however, the etiology or rationale for the diagnosis is not included with the evidence submitted. His personal statement is not sufficiently detailed to establish clinical symptoms or provide a nexus with his misconduct. Additional records (e.g., post-service mental health records describing the Petitioner's diagnosis, symptoms, and their specific link to his misconduct) would aid in rendering an alternate opinion.

The Ph.D. concluded, "it is my considered clinical opinion there is insufficient evidence of a mental health condition that may be attributed to military service. There is insufficient evidence that his misconduct could be attributed to a mental health condition."

On 16 February 2024, you responded by providing additional evidence in support of your request, to include a professional summary drafted by █ Ph.D., HSPP. On 24 February 2024, the Ph.D. who wrote the AO reviewed your response and, as no new medical evidence was presented, the original opinion remained unchanged.

After thorough review, the Board concluded the 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 undiagnosed mental health issues and the possible adverse impact on your service. Specifically, the Board felt that your misconduct, as evidenced by your NJPs, outweighed these mitigating factors. The Board considered the seriousness of your misconduct and the fact that it involved repeated alcohol related misconduct and an assault on a shipmate. Further, the Board also considered the likely negative impact your conduct had on the good order and discipline of your command. The Board determined that sustained alcohol abuse and related misconduct is contrary to the Navy core values and policy, renders such Sailor unfit for duty, and poses an unnecessary risk to the safety of fellow shipmates.

In making this determination, the Board concurred with the AO 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 condition was related to or mitigated the misconduct that formed the basis of your discharge. Your in-service misconduct appears to be consistent with your alcohol use disorder, rather than evidence of another mental health condition incurred in or exacerbated

by military service. During your separation physical performed on 11 August 1992, although you reported treatment for a mental condition during your time in CCU, you did not disclose any ongoing mental health symptoms that would have triggered a mental health evaluation. On the contrary, you reported to be “in good health” and specifically denied any depression, excessive worry, trouble sleeping, or nervous trouble. You were offered alcohol abuse treatment, both with the Navy and the VA, but declined to participate in either. The Board noted that you also failed to disclose any mental health concerns during your numerous disciplinary events, which would have triggered a mental health referral and assessment prior to your discharge. Therefore, the Board determined your post-service diagnosis of PTSD is temporally remote to your service and fails to establish a sufficient nexus to your underlying misconduct. As a result, the Board concluded that your misconduct was not due to mental health-related symptoms, rather, due to your sustained alcohol abuse. The Board determined the record clearly reflected that your active duty 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 otherwise not be held accountable for your actions. The Board concluded that your conduct constituted a significant departure from that expected of a Sailor and continues to warrant an OTH characterization, a misconduct basis for separation, and an RE-4 reentry code.

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,

3/14/2024

