



you earned a 3.33 trait average and promotable recommendation in your April 2001 performance evaluation and were frocked to DK3.

Upon transferring to [REDACTED] you were again involved in misconduct and poor performance leading to a third NJP on 15 November 2001. In this incident, you were found to have used disrespectful language toward superiors, violated orders, used provoking words, and communicating a threat by saying to a second class petty officer "I will kill you." Based on your misconduct and specific identified deficiencies in your performance as a DK, your frocking was withdrawn and your Navy Enlisted Classification (NEC) was removed in February 2002. You received a second adverse performance evaluation in February 2002 that memorialized the basis for your NEC removal.

In June 2002, you transferred to [REDACTED] and, once again, committed misconduct that resulted in a fourth NJP, on 21 November 2002, for insubordination and disorderly conduct. However, your performance improved and, on 20 October 2003, you received your last performance evaluation in which you earned a 3.17 trait average and a promotable recommendation. You were discharged that same day at your end of your required active service obligation and issued a RE-1 reentry code and a recommendation for retention.

You claim you began to struggle in the Navy following your 8 June 2001 transfer to [REDACTED]. While at [REDACTED] you state you injured your back at the gym, which led to treatment for back pain via medication and physical therapy. You also stated that you started taking Accutane in August 2001 and the side effects of Accutane caused serious side effects including irritability, aggression, and a personality change; which resulted in NJP, the reduction of rank from E-4 to E-3, and the loss of your DK rating. You argue the Department of the Navy erred by not monitoring your condition while on Accutane. You request removal of your performance evaluation dated 16 January 2002, which resulted in the removal of your DK3 designator. In addition, you request your rank be changed from E-3 to E-4, that your NEC designator be changed to "DK" with an effective date of 15 November 2001, and that you receive a medical discharge for acne scars and feet and back injuries sustained in the Navy.

To support your contentions, you provided articles stating that Accutane causes some people to become violent or aggressive. You claim that your use of Accutane caused your aggressive actions and provided your previous petitions to the Board, information about Accutane, and medical records establishing that you took Accutane while in the military. You provided Department of Veterans Affairs (VA) documentation that opines that your chronic lower back pain, leg pain and foot pain are related to your military service. You also claim that you should have been placed on limited duty status and ultimately referred to a medical evaluation board for these medical concerns. For purposes of clemency and equity consideration, the Board considered the evidence you submitted in support of your application.

The Board carefully reviewed your petition and the material that you provided in support of your petition, and disagreed with your rationale for relief. In keeping with the letter and spirit of the Kurta Memo, 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, to include whether they qualified you for the military disability benefits you seek.

First, the Board found there was insufficient evidence for a finding of unfit for continued naval service due to any of your medical conditions. Specifically, the Board noted your documented performance prior to your discharge did not support a finding that you were unable to perform the duties of your office, grade, rank or rating. For your last performance evaluation, you earned a 3.17 trait average on the date of your discharge along with a recommendation for promotion and retention. In addition, the Board noted you were able to perform at fleet standards for your paygrade, with no evidence of an occupational impairment noted in your record, and you passed a medical separation exam, were recommended for retention, and found fit for reenlistment. Consequently, the Board determined you were physically qualified to reenlist had you chosen to do so. Finally, the Board noted that a post-service determination by the VA of service-connected medical issues does not establish that you were unfit for duty in 2003 since eligibility for disability ratings by the VA is tied to the establishment of service connection and is manifestation-based without a requirement that unfitness for military duty be demonstrated. The Board thus concluded that you failed to establish that you merit a disability discharge or retirement from the Navy.

Second, the Board determined there was no evidence of error regarding your withdrawal of your advancement to DK3 or removal of your NEC. You allege that the medication Accutane led your misconduct and ultimate defrocking and NEC removal. Yet the Board found that you had a long history of misconduct and disregard for authority throughout your four-year enlistment; starting in July 2000 when you received an adverse evaluation documenting numerous counseling regarding performance. At the time you commenced taking Accutane, you had already undergone two NJPs and adverse performance evaluation. Further, the Board noted that you had stopped taking Accutane in January 2002. However, in June 2002, approximately six months after you stopped the medication, you committed misconduct that resulted in a fourth NJP. As a result, the Board was not persuaded by your arguments relating to the effect Accutane had on your conduct. As a result, the Board found your command's justification for removing your frocking to E4 appropriate in light of the serious misconduct for which NJP was imposed on 15 November 2001. Additionally, the Board determined your command properly documented your performance deficiencies as DK to warrant your NEC removal.

Therefore, while the Board carefully considered the evidence you submitted in mitigation, even in light of the Kurta 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 three (3) separate occasions to change your record through this Board 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 relief each time. 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,

12/10/2023

