



**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. 7096-23

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 limitations 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 April 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 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. Although you were offered the opportunity to respond to the AO, 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 United States Navy and commenced a period of service on 7 March 1991. On 24 July 1991, you were assessed by Audiology, wherein the treatment record notes "manipulative behavior." On 26 July 1991, you were absent from your appointed place of duty for over three

hours. On 7 August 1991, you began a period of unauthorized absence (UA) from your command, and remained absent until your return to military control on 23 August 1991, for a total of 16 days. Upon your return from UA, you were admitted to the hospital for psychiatric evaluation. You were evaluated by a psychiatrist and diagnosed with “Simple Phobia (claustrophobia)” and a “Severe Personality Disorder (NOS).” The treating psychiatrist noted “[h]e is responsible for his actions and is aware of the consequences of his behavior. He is not suicidal, but is manipulative.” It was determined that you were “fit for full duty” but expeditious administrative separation was recommended.

On 2 November 1991, you began another period of UA from your command, and remained absent until your return to military control on 16 January 1992, for a total of 75 days. On 17 January 1992, you were again evaluated by a mental health professional and recommended for expeditious separation based on the severity of your personality disorder and your verbalization of manipulative threats. It was concluded that your personality disorder significantly impaired your ability to function in military environment.

On 20 February 1992, you were found guilty at Special Court Martial (SPCM) of violating Uniform Code of Military Justice Article 86, for the 75-day period of UA. You were sentenced to 49 days confinement, forfeitures of \$500 pay per month for two months, reduction in rank to E-1 (automatic) and a Bad Conduct Discharge (BCD). Your case was forwarded for appellate review and you were placed on appellate leave. Ultimately, on 3 June 1993, you were discharged from the Navy for misconduct with a BCD as adjudged by the SPCM and assigned an RE- 4 reentry code.

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 change your characterization of service, (b) your assertion that you were struggling with undiagnosed mental health conditions during your service related to trauma, and (c) the impact that your mental health had on your conduct. In addition, the Board noted you checked the “Reprisal” box on your application but you chose not to provide any evidence in support of your claim. For purposes of clemency consideration, the Board noted you did not provide documentation related to your post-service accomplishments or character letters.

In your request for relief, you contend that you incurred Post Traumatic Stress Disorder (PTSD) from multiple assaults that during military service, which contributed to your misconduct. 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 29 February 2024. The Ph.D. noted in pertinent part:

Petitioner was diagnosed with a Simple Phobia as well as a Personality Disorder while in service. Two of his periods of UA preceded his obtaining diagnoses, thus it is unlikely that either could be said to have caused his misconduct. There is no evidence that the Petitioner was diagnosed with PTSD, nor that he stated in any of his discharge proceedings that he was assaulted. He did not submit any medical evidence in support of his claim. 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."

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 numerous periods of UA and your SPCM conviction, outweighed these mitigating factors. The Board considered the seriousness of your misconduct and the likely negative impact that your conduct had on the good order and discipline of your command. The Board determined that such misconduct is contrary to the Navy core values and policy, and places an unnecessary burden on 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. You did not raise any claims of assault or mental health concerns during your court martial or on appeal. Your in-service misconduct appears to be consistent with your diagnosed personality disorder, rather than evidence of another mental health condition incurred in or exacerbated by military service. By definition, personality disorders are characterological and are pre-existing to military service. Further, you did not provide any post-service medical documents in support of your contention about a mental health diagnosis and your personal statement fails to draw sufficient nexus to the underlying misconduct. The Board concluded that your misconduct was not due to mental health-related symptoms. The Board determined that 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. As a result, the Board determined your conduct constituted a significant departure from that expected of a Sailor and continues to warrant a BCD as issued by the court.

Therefore, 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.

The Board also determined there was insufficient evidence to conclude you were the victim of reprisal in violation of 10 USC 1034. 10 USC 1034 provides the right to request Secretary of Defense review of cases with substantiated reprisal allegations where the Secretary of the Navy's

follow-on corrective or disciplinary actions are at issue. Additionally, in accordance with DoD policy you have the right to request review of the Secretary of the Navy's decision regardless of whether your reprisal allegation was substantiated or non-substantiated. Your written request must show by clear and convincing evidence that the Secretary of the Navy acted arbitrarily, capriciously, or contrary to law. This is not a de novo review and under 10 USC 1034(c) the Secretary of Defense cannot review issues that do not involve reprisal. You must file within 90 days of receipt of this letter to the Under Secretary of Defense for Personnel and Readiness (USD(P&R)), Office of Legal Policy, 4000 Defense Pentagon, Washington, DC 20301-4000. Your written request must contain your full name, grade/rank, duty status, duty title, organization, duty location, mailing address, and telephone number; a copy of your BCNR application and final decisional documents; and, a statement of the specific reasons why you are not satisfied with this decision and the specific remedy or relief requested. Your request must be based on factual allegations or evidence previously presented to the BCNR, therefore, please also include previously presented documentation that supports your statements.

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,

4/22/2024

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