



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. 7591-23

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 18 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 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). The Board also considered the advisory opinion (AO) furnished by a qualified mental health professional and your reply to the AO.

You enlisted in the United States Navy and began a period of active duty on 1 September 2004. In July 2005, you received a psychiatric evaluation as part of your Conscientious Objector request. You were diagnosed with "Adjustment Disorder with Mixed Disturbance of Emotions and Conduct. 'Cluster B' personality features were also noted." The ship's psychologist revealed that on two previous occasions, you "utilized psychiatric care in an attempt to separate from the Navy" and did not follow through on any treatment recommendations. The report explained that you made "limited progress and minimal change in your ability to cope with routine daily stressors." While the ship's psychologist did not positively endorse your

Conscientious Objector request, she did recommend your administrative separation for Failure to Adapt to Naval Service per MILPERSMAN 1910-120.

On 18 January 2006, you began a period of unauthorized absence (UA) from your command and remained absent until 20 July 2006, for a total period of 181 days. On 20 July 2006, in accordance with MILPERSMAN 1910-106, you requested a separation in lieu of trial by court martial (SILT). You acknowledged that if your request was accepted, you would be discharged under Other than Honorable (OTH) conditions. Your commanding officer accepted your SILT request, directing your administrative discharge from the Navy with an OTH characterization of service. On 10 August 2006, you were discharged from the Navy by reason of “In Lieu of Trial by Court Martial” with an OTH characterization of service and an “RE-4” reenlistment code.

Post-discharge, you submitted a petition to the Naval Discharge Review Board and were denied relief on 14 March 2008.

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 struggling with undiagnosed mental health issues as a result of your forced military service and denial of your Conscientious Objector request, and (c) the impact of your mental health concerns on your conduct. For purposes of clemency and equity consideration, the Board noted that you provided documentation related to your post-service accomplishments and character letters.

In your petition, you contend that you were suffering from undiagnosed mental health issues during your time in the Navy, after being forced to continue in the military service despite your feelings about war. You assert that you went UA after your Conscientious Objector request was denied because you felt that you had no other recourse to maintain your personal ethical standards. 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 13 February 2024. The Ph.D. noted in pertinent part:

During military service, the Petitioner was evaluated by military mental health providers and diagnosed with a mental health condition, an adjustment disorder. An adjustment disorder refers to difficulty adapting to an environment or stressor and typically resolves with a change or removal of the stressor. The Petitioner has provided no post-service evidence of another mental health condition. Unfortunately, available records do not establish a nexus between his mental health condition and his misconduct, as he claims his misconduct was due to his personal code of ethics. 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 AO concluded, “it is my clinical opinion there is in-service evidence of a mental health condition that may be attributed to military service. There is insufficient evidence to attribute his misconduct to a mental health condition.”

You submitted a rebuttal on 2 March 2024, arguing that the AO was contradictory and that a person’s mental health directly impacts their actions. The Ph.D. reviewed your response and, as no new medical evidence was provided, the original AO 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 determined that your misconduct, as evidenced by your substantial period of UA and SILT discharge, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and its negative impact on the mission. The Board highlighted that you requested a SILT, thereby avoiding a possible court martial conviction and punitive discharge. The Board felt that the separation authority already granted you clemency by accepting your separation in lieu of trial by court martial. The Board felt that your command would likely have pursued your separation for Failure to Adapt to Naval Service per MILPERSMAN 1910-120, but that you voluntarily went UA instead of giving your command an opportunity to separate you through proper channels.

In making this determination, the Board concurred with the AO that you were properly evaluated by military mental health providers and diagnosed with an adjustment disorder. An adjustment disorder refers to difficulty adapting to an environment or stressor and typically resolves with a change or removal of the stressor. The Board felt that this diagnosis formed the basis of your command’s desire to separate you for failure to adapt. Experiencing stress in maintaining your personal code of ethics does not automatically equate to a mental health condition. As a result, the Board concluded that your misconduct was not due to mental health-related symptoms. 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.

While the Board carefully considered the evidence you submitted in mitigation and commends you for your post-discharge accomplishments, 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,

3/29/2024

