



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. 7623-23

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 25 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, which was previously provided to you. Although you were afforded an opportunity to submit an AO rebuttal, you chose not to do so.

You enlisted in the Navy and began a period of active duty on 29 February 2000. You subsequently completed this enlistment with an Honorable characterization of service, on 26 December 2004, and immediately reenlisted. On 17 February 2006, you received non-judicial punishment (NJP) for unauthorized absence (UA), insubordinate conduct, and failure to obey an order or regulation. As punishment, you were awarded reduction in rank (RIR) to E-3 and forfeiture of pay. Additionally, you were issued an administrative remarks (Page 13) retention

warning documenting deficiencies in your poor military performance and conduct. Specifically, failure to maintain your military bearing, failure to obey various orders and failure to be at your appointed place of duty at the time prescribed. On 12 March 2007, you received a second NJP for UA, failure to obey order or regulation, and malingering. As punishment, you were awarded RIR to E-2, and forfeiture of pay.

Unfortunately, the documents pertinent to your administrative separation are not in your official military personnel file. Notwithstanding, the Board relies on a presumption of regularity to support the official actions of public officers and, in the absence of substantial evidence to the contrary, will presume that they have properly discharged their official duties. Based on the information contained on your Certificate of Release or Discharge from Active Duty (DD Form 214), you were separated from the Navy, on 18 May 2007, with a “General (Under Honorable Conditions) (GEN)” characterization of service, your narrative reason for separation is “Pattern of Misconduct,” your reenlistment code is “RE-4,” and your separation code is “HKA,” which corresponds to misconduct due to pattern of misconduct.

Post-discharge, you applied to the Naval Discharge Review Board (NDRB) for a discharge upgrade. The NDRB denied your request for an upgrade, on 28 April 2023, based on their determination that your discharge was proper as issued.

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 to upgrade your discharge character of service to Honorable, change your narrative reason for separation and reenlistment code, correct your Certificate of Release or Discharge from Active Duty (DD Form 214) to reflect two Good Conduct Medals, change your paygrade to reflect E-4, and correct your record to reflect your religious preference of Christian. The Board considered your contentions that: (1) the add charge of disrespect towards a noncommissioned officer was “trumped up,” (2) you were bullied, received harassment, and hazing by your command, (3) you were bullied out of the Navy for personal reasons that are arbitrary to the U.S. Constitution, (4) you were suffering from a hardship after receiving news that your father had passed away, (5) based on your submission of supporting documentation, a correction to your discharge should be made due to equity, fairness, and justice, and (6) you have proven your commitment to excellence through your continuous honorable service, excellent PRT scores, EAWS qualification, and outstanding post-service accomplishments. For purposes of clemency and equity consideration, the Board considered the evidence you submitted in support of your application.

As part of the Board’s review, a qualified mental health professional reviewed your request and provided the Board with an AO on 2 February 2024. The AO noted in pertinent part:

Petitioner was appropriately referred for psychological evaluation and properly evaluated during his enlistment. His alcohol use disorder diagnosis was based on observed behaviors and performance during his period of service, the information he chose to disclose, and the psychological evaluation performed by the mental health clinician. Unfortunately, he has provided no medical evidence to support his claims of another mental health condition. There is insufficient evidence to attribute

his misconduct to a mental health condition, as he denies having engaged in the misconduct and claims it was based on reprisal and discrimination. 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 insufficient evidence of a diagnosis of a mental health condition other than alcohol use disorder. There is insufficient evidence to attribute his misconduct to a mental health condition."

After thorough review, the Board concluded your potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your administrative counseling and NJPs, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and concluded your misconduct showed a complete disregard for military authority and regulations. Further, the Board concurred with the AO that there is insufficient evidence of a diagnosis of a mental health condition, other than alcohol use disorder, and there is insufficient evidence to attribute your misconduct to a mental health condition. As the AO explained, you provided no medical evidence to support your claims of another mental health condition and there is insufficient evidence to attribute your misconduct to a mental health condition. Therefore, the Board 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 noted that you were provided an opportunity to correct your deficiencies during your service; however, you continued to commit additional misconduct. Your administrative counseling, malingering, period of UA, violation of orders and regulations, and insubordinate conduct not only showed a pattern of misconduct but were sufficiently serious to negatively affect the good order and discipline of your unit. Finally, contrary to your contentions, the Board found your record of misconduct more than sufficient to support your administrative separation, assigned characterization of service, separation code, and reenlistment code.

As a result, the Board determined significant negative aspects of your active-duty service outweighed the positive and continues to warrant a GEN characterization. In addition, the Board found no errors with your assigned paygrade or awards. 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,

4/3/2024

