



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. 8107-23
Ref: Signature Date

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Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to Title 10, United States Code, Section 1552. 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 Board waived the statute of limitation 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 19 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 the 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 to 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) of a qualified mental health provider that was considered favorable to you.

You enlisted in the Navy and began a period of active duty on 2 August 1999. In January 2000, you discovered the body of a sailor who had hung himself in berthing, and you were subsequently psychiatrically hospitalized from 26 January 2001 to 5 February 2001. Over a year later, on 23 April 2001, you were subject to nonjudicial punishment (NJP) for violations of the Uniform Code of Military Justice (UCMJ) under Article 134, for disorderly conduct, and two specifications under Article 86 for periods of unauthorized absence (UA) from 5 to 7 February 2001 and from 17 to 18 April 2001. You then elected to absent yourself, from 26 to 27 April 2001, shortly after your NJP, although you did not receive additional punishment for this

offense. On 20 December 2001, you were subject to a second NJP for violation of the UCMJ under Article 91 due to behaving with disrespect toward a chief and for disobeying that same chief.

Unfortunately, the documents pertinent to your administrative separation are not in your official military personnel file (OMPF). 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. Your Certificate of Release or Discharge from Active Duty (DD Form 214), reveals that you were separated from the Navy on 13 May 2002 with an Other Than Honorable (OTH) characterization of service, your narrative reason for separation is "Pattern of Misconduct," your separation code is "HKA," and your reenlistment code is "RE-4."

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 to "Honorable" and change your narrative reason for separation to either "Secretarial Authority" or "Medical Separation." You contend that you suffered multiple traumatic experiences during your military service which adversely affected the quality of your service and warrant liberal consideration. Specifically, you contend that your traumatic experience aboard your ship, when you discovered the body of the deceased sailor caused, you to have severe mental health issues to the point that you began having thoughts of self-harm, resulting in your psychiatric hospitalization and diagnosis of an Adjustment Disorder with Depressed Mood. You also state that you experienced further trauma after walking into a berthing area where two sailors were actively raping a female sailor, which you immediately reported and resulted in their discharge. However, you feel that you experienced backlash and reprisal for having reported the incident because it ended the careers of two well-liked members of your crew. You allege that your NJP for disrespect and disobeying a chief resulted from being ordered to go into the berthing area where you had found the deceased sailor, which you refused to do. You also alleged that your chief convinced you to take the blame for another Sailor who threw trash off the ship and caused a man-overboard situation, which resulted in your administrative separation processing. You believe that a proper physical examination at the time of your discharge would have looked more closely at your mental health issues and resulted in either medical separation or medical retirement due to unfitness for further service. For purposes of clemency and equity consideration, the Board noted you included your counsel's brief, a personal statement, a witness statement from your former spouse regarding observation of your mental health symptoms, records of your psychiatric evaluations and hospitalizations, service health records, a post-discharge psychiatric evaluation for post-traumatic stress disorder, post-discharge certificates of your continuing education in accounting, and your license as a real estate broker.

Because you contend that post-traumatic stress disorder (PTSD) or another mental health condition contributed to the misconduct which resulting in your discharge, the Board also considered the AO. The AO stated in pertinent part:

Petitioner submitted a psychiatric evaluation dated September 2003, (just over one year after having been discharged). In addition to an evaluation, the psychologist administered the Personality Assessment Inventory (PAI) – a vetted valid and reliable psychological testing instrument. The test results indicated that the

