



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. 9722-23
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 14 June 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). Additionally, the Board also considered an advisory opinion (AO) furnished by qualified mental health provider. Although you were provided an opportunity to submit an AO rebuttal, you chose not to do so.

You enlisted in the U.S. Navy and began a period of active duty service on 3 August 1994. Your home of record at the time of your enlistment was in █. Your pre-enlistment medical examination, on 13 May 1994, and self-reported medical history both noted no psychiatric or neurologic conditions or symptoms. On 9 December 1994, you reported for duty on board the █

After only being assigned to your ship for less than one (1) month, you commenced an unauthorized absence (UA). While you were in a UA status, you missed the movement of your ship on 20 January 1995. You command declared you to be a deserter, on 3 February 1995, and

your UA terminated after fifty-three (53) days on 25 February 1995.

On 14 March 1995, you were convicted at a Summary Court-Martial (SCM) of your 53-day UA and for missing movement. You were sentenced to forfeitures of pay and restriction for sixty (60) days. On 15 March 1995, the Convening Authority (CA) approved your SCM sentence.

On 20 October 1995, you commenced another UA. While in a UA status you missed the movement of your ship on 6 November 1995. Your UA terminated on the morning of 7 November 1995 with your surrender to military authorities. However, later on 7 November 1995, you commenced another UA. Your command declared you to be a deserter on 7 December 1995. Your UA terminated on 25 January 1996 with your arrest by the FBI.

On 29 February 1996, you were convicted at a Special Court-Martial (SPCM) of UA and missing movement. You were sentenced to forfeitures of pay, a reduction in rank to the lowest enlisted paygrade (E-1), confinement for thirty (30) days, and a discharge from the Navy with a Bad Conduct Discharge (BCD). On 25 July 1996, the CA approved your SPCM sentence as adjudged. Following the completion of post-trial SPCM appellate review, you were ultimately discharged from the Navy with a BCD on 20 February 1997 and were assigned an RE-4 reentry code.

On 25 February 2016, this Board denied your first discharge upgrade petition. On 25 June 2018, this Board denied your second discharge upgrade petition.

The Board carefully considered all potentially mitigating factors to determine whether the interests of justice warrant relief in your case in accordance with the Hagel, Kurta, and Wilkie Memos. These included, but were not limited to, your desire for a discharge upgrade and contentions that: (a) for over twenty-six (26) years you have held in the truth behind your actions now that the Navy has changed its policy on trauma, (b) you were never able to tell of the horror stories from your Navy days that stemmed from hazing and sexual harassment, (c) it wasn't until recently after over 26 years and being suicidal that you are trying one last time to attempt to have the Navy help you with your issues, (d) you have received so many great values from the Navy but you are left with a mental condition stemming from the cause of your problems and never being able to speak of it to anyone, and (e) you are seeking a discharge upgrade to get the healthcare and treatment you need from the VA for the time you served and the unexplainable gross actions that happened to you. For purposes of clemency and equity consideration, the Board considered all of the evidence you provided in support of your application.

As part of the Board review process, a licensed clinical psychologist (Ph.D.) reviewed your contentions and the available records and issued an AO dated 7 May 2024. The Ph.D. stated in pertinent part:

The Petitioner submitted a patient health summary from unknown treating entity dated 2021 noting diagnoses of Depression, "continuous use of opioids," and opiate overdose – "accidental or unintentional." He also submitted a letter from a LAC indicating diagnoses of Generalized Anxiety Disorder, Major Depressive Disorder and PTSD. The letter notes that the Petitioner has

been in therapy for these conditions since December 1, 2022. There is no evidence that the Petitioner was diagnosed with a mental health condition while in military service, or that he exhibited any psychological symptoms or behavioral changes indicative of a diagnosable mental health condition. He submitted evidence of temporally remote post-service diagnoses of Depression, Opioid Abuse, PTSD, and Generalized Anxiety Disorder; however, the etiology or rationale for the diagnoses is not included with the evidence submitted. His personal statement is not sufficiently detailed to establish clinical symptoms or provide a nexus with his misconduct. His description of the traumatic event does not meet criteria for DSM-5-TR PTSD diagnosis. 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 these potentially mitigating factors were insufficient to warrant relief. In accordance with the Hagel, Kurta, and Wilkie Memos, 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. However, the Board concluded there was no nexus between any mental health conditions and/or related symptoms and your misconduct and determined that there was insufficient evidence to support the argument that any such mental health conditions mitigated the misconduct forming the basis of your discharge. The Board noted that although you have post-service mental health diagnoses, active duty records contemporaneous to your service and any post-service clinical records submitted lacked sufficient evidence to establish a nexus between your mental health conditions/symptoms and your in-service misconduct. As a result, the Board concluded that your misconduct was not due to mental health-related symptoms. Even if the Board assumed that your misconduct was somehow attributable to any mental health conditions, the Board concluded that the severity of your misconduct far outweighed any and all mitigation offered by such mental health conditions. The Board determined the record clearly reflected that your misconduct was willful and intentional, and demonstrated you were unfit for further service. The Board also noted that the evidence of record did not demonstrate you were not mentally responsible for your conduct or that you should not be held accountable for your actions.

The Board also noted that, although it cannot set aside a conviction, it might grant clemency in the form of changing a characterization of discharge, even one awarded by a court-martial. However, the Board concluded that despite your contentions this was not a case warranting any clemency as you were properly convicted at a SPCM of serious misconduct. The Board determined that characterization with a BCD is appropriate when the basis for separation is the commission of a serious act or acts constituting a significant departure from the conduct expected of a Sailor. The simple fact remains is that over your career you left the Navy while you were still contractually obligated to serve and you went into a UA status without any legal justification or excuse on no less than three (3) separate occasions totaling approximately 150 days. Moreover, absent a material error or injustice, the Board declined to summarily upgrade a

discharge solely for the purpose of facilitating veterans' benefits or enhancing educational or employment opportunities.

As a result, the Board determined that there was no impropriety or inequity in your discharge, and the Board concluded that your misconduct and disregard for good order and discipline clearly merited your discharge. 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,

6/17/2024

