



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. 2672-24
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.

Because your application was submitted with new evidence not previously considered, the Board found it in the interest of justice to review your application. A three-member panel of the Board, sitting in executive session on 12 April 2024, has carefully examined your current request. 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 25 August 2017 guidance from the Office of the Under Secretary of Defense for Personnel and Readiness (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 for your previous BCNR petition. Although you were afforded an opportunity to submit an AO rebuttal for consideration at such time, 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 previously applied to this Board for a discharge upgrade and were denied on 22 January 2021. The facts of your case remain substantially unchanged.

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 for a discharge upgrade and contentions that: (a) you are seeking an upgrade so that you are eligible to request compensation for the unjust separation you incurred, (b) discrimination, mental and sexual abuse, and maltreatment you experienced eventually led to your discharge, (c) after several months of abuse from your petty officer, you were sent to a ██████████ Hospital following a suicide attempt, (d) after years of mental and emotional struggle, you were diagnosed with gender dysphoria three years ago, (e) while in the Navy you believe that if you had an honest evaluation instead of the diagnoses you received, you would have been able to seek the treatment you needed instead of suffering in the way you had to all these years. For purposes of clemency and equity consideration, the Board considered the evidence you provided in support of your application.

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 11 December 2020 for your previous BCNR petition. The Ph.D. stated in pertinent part:

Petitioner's in-service records do contain direct evidence of a mental health issue/concern for which Petitioner received treatment (i.e., suicidal ideation) and was seen as psychiatrically fit for duty; however, due to his personality disorder was recommended for administrative separation. Petitioner's misconduct occurred prior to the car accident, which he claimed caused him to suffer from PTSD. Petitioner has not submitted any clinical documentation to support his contention he suffered from a mental health condition or PTSD, rather than a personality disorder, which would have mitigated his misconduct.

The Ph.D. concluded, "it is my considered medical opinion Petitioner's diagnosis of a personality disorder was properly evaluated and diagnosed, and there is insufficient evidence of any additional mental health condition attributable to Petitioner's military service, which would mitigate his misconduct."

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 that there was no convincing evidence of any nexus between any purported 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 that formed the basis of your discharge. As a result, the Board concluded that your misconduct was not due to mental health-related conditions or symptoms. Even if the Board assumed that your misconduct was somehow attributable to any mental health conditions, the Board unequivocally concluded that the severity of your

misconduct far outweighed any and all mitigation offered by such mental health conditions. The Board determined the record reflected that your 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 not be held accountable for your actions.

The Board recognizes that personality disorders are characterized by a longstanding pattern of unhealthy behaviors, dysfunctional relationships, and maladaptive thinking patterns. They are not typically conditions considered unfitting or disabling, but render service members unsuitable for military service and consideration for administrative separation. Accordingly, the Board concluded that your personality disorder was a non-disabling disorder of character and behavior, and that it should not be considered a mitigating factor in your misconduct because it did not impair your ability to be accountable for your actions or behaviors. Moreover, the Board unequivocally determined that you had a legal, moral and ethical obligation to remain truthful on your enlistment paperwork. Had you properly and fully disclosed your entire pre-enlistment criminal history and your two (2) pre-service suicide attempts at age 14, you would have likely been disqualified from enlisting.

The Board observed that character of military service is based, in part, on conduct and overall trait averages which are computed from marks assigned during periodic evaluations. Your overall active duty trait average calculated from your available performance evaluations during your enlistment was approximately only 1.0 in conduct. Navy regulations in place at the time of your discharge recommended a minimum trait average of 3.0 in conduct (proper military behavior), for a fully honorable characterization of service. The Board concluded your cumulative misconduct was not minor in nature and that your conduct marks during your active duty career were a direct result of your serious misconduct that further justified your OTH characterization.

The Board did not believe that your record was otherwise so meritorious as to deserve a discharge upgrade. The Board concluded that significant negative aspects of your conduct and/or performance greatly outweighed any positive aspects of your military record. The Board determined that characterization under OTH conditions is appropriate when the basis for separation is the commission of an act or acts constituting a significant departure from the conduct expected of a Sailor. The simple fact remains is that in addition to the misconduct forming the basis of your administrative separation, you also left the Navy while you were still contractually obligated to serve and you went into a UA status without any legal justification or excuse for an additional nineteen (19) days while your OTH discharge was pending.

As a result, the Board determined that there was no impropriety or inequity in your discharge and concluded that your misconduct and disregard for good order in 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 have now attempted on two (2) occasions to upgrade your discharge at the BCNR without success. With certain non-material exceptions, your contentions and proffered supporting evidence have largely remained unchanged for each of your petitions, and the Board has declined to grant clemency each time even in light of Wilkie Memo considerations. In the absence of sufficient new evidence for reconsideration, the decision of the Board is final, and your only recourse would be to seek relief, at no cost to the Board, from a court of appropriate jurisdiction.

Sincerely,

4/23/2024

