



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. 4301-24
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.

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 4 October 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 and your AO rebuttal submission.

You enlisted in the U.S. Navy and began a period of active duty service on 19 March 2003. You received enlistment waivers for: (a) a disqualifying medical condition, (b) non-misdemeanor breaking & entering pre-service, and (c) multiple pre-service probation violations.

On 8 December 2003, you received non-judicial punishment (NJP) for failing to obey a lawful

order or regulation. You did not appeal your NJP. On the same day, your command issued you a "Page 13" retention/counseling warning (Page 13) documenting your NJP. The Page 13 expressly advised you that any further deficiencies in your performance and/or conduct may result in processing for administrative separation.

On 28 January 2004, you received NJP for the destruction of military property and failing to obey a lawful order or regulation. You did not appeal your NJP.

On 3 February 2004, your command issued you a Page 13 documenting your disobedience of lawful orders and regulations, and your poor military bearing and character. The Page 13 expressly advised you that any further deficiencies in your performance and/or conduct may result in disciplinary action and in processing for administrative separation.

On 30 July 2004, your command issued you a Page 13 documenting the withdrawal of your recommendation for advancement to Hospitalman/E-3. The deficiencies noted included, in part, the following:

Steadily lacking initiative and clinical skills compared to his peers due to limited personal motivation. Handles assigned tasks requiring constant direct supervision for proper and timely completion. Demeanor and attitude lackluster at best. Striving to increase knowledge skills through attentive hands-on training in patient care.

Demonstrates poor military bearing and unsatisfactory military appearance, Military bearing has consistently decreased since reporting to the command even after numerous written and verbal counseling. Awarded on 28Jan04 a Non-Judicial Punishment (NJP); received forfeiture of half a month's pay for one month as well and restriction for 14 days.

You elected in writing not to seek a review/redress of this matter under UCMJ Article 138.

You deployed to █ between 9 May 2004 and 27 November 2004.

On 19 April 2005, you were convicted at a Summary Court-Martial (SCM) of an assault and two (2) separate specifications of failing to obey a lawful order. You were sentenced to a reduction in rank to the lowest enlisted paygrade (E-1), forfeitures of pay, restriction, and hard labor without confinement.

On 28 April 2005, your command issued you a Page 13 documenting your suspension of base driving privileges following your arrest for reckless driving and being found guilty in traffic court. The Page 13 expressly advised you that any further deficiencies in your performance and/or conduct may result in disciplinary action and in processing for administrative separation.

On 23 May 2005, your command issued you a Page 13 documenting that you failed to report to your appointed place of duty on two (2) separate occasions. The Page 13 expressly advised you that any further deficiencies in your performance and/or conduct may result in disciplinary action

and in processing for administrative separation.

On 17 January 2006, pursuant to your guilty pleas, you were convicted at a second SCM of: (a) three (3) separate specifications of unauthorized absence (UA), (b) insubordinate conduct, (c) two (2) separate specifications of service discrediting conduct/conduct prejudicial to good order and discipline, and (d) two (2) separate specifications of failing to obey a lawful order or regulation. You were sentenced for forfeitures of pay.

Consequently, your command notified you of administrative separation proceedings by reason of misconduct due to a pattern of misconduct. You waived your rights to consult with counsel and to request a hearing before an administrative separation board. Your separation physical examination, on 10 March 2006, determined you were physically qualified for separation. Ultimately, on 22 March 2006, you were separated from the Navy for misconduct with an Other Than Honorable conditions (OTH) discharge characterization and were assigned an RE-4 reentry code.

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: (a) you developed service-connected PTSD and aggravated bipolar disorder from your combat tour to Afghanistan, (b) pursuant to DoD guidance since your discharge, your active duty misconduct underlying and leading to your discharge is outweighed by your service-connected PTSD and aggravated bipolar disorder, (c) your post-service suffering, recent improvements, and pre-service successes support a showing that your misconduct was influenced by your service-connected PTSD and bipolar disorder, (d) you entered the military to help others as a medical corpsman, you have tried to help people throughout your life even when you were homeless, (e) you currently work in a job where you can help those in need, and you volunteer with children who have mental health conditions, and (f) you strongly desire to continue building a life around helping others, and receiving a discharge characterization upgrade would give you the boost you need to do just that. For purposes of clemency and equity consideration, the Board considered the totality of the evidence you provided in support of your application.

A licensed clinical psychologist (Ph.D.) reviewed your contentions and the available records and issued an AO dated 22 August 2024. As part of the Board's review, the Board considered the AO. The AO stated in pertinent part:

In his October 2004 post-deployment health assessment, the Petitioner reported experiencing nightmares and some symptoms of depression. No mental health referrals were indicated.

In his separation physical, he reported experiencing nightmares and difficulty sleeping since December 2005. Petitioner was deemed medically qualified for separation. Nightmares were evaluated by a military psychiatrist and reported to be "only a minor stressor, no acute sx [symptoms], no acute worsening." His complete service medical record was not available for independent review.

Petitioner was evaluated on multiple occasions during military service and denied significant impairment with respect to any residual mental health symptoms following his combat deployment. Temporally remote to his service, the VA has granted service connection for PTSD and another mental health condition that have been deemed to have been aggravated by service. Unfortunately, there are inconsistencies in the Petitioner's report to his mental health provider, his statement in his petition, and his service record, which raise questions regarding his candor and the reliability of his recall over time. It is difficult to attribute his misconduct solely to mental health symptoms exacerbated by military service, given his pre-service behavior that appears to have continued before and after the combat deployment.

The Ph.D.'s concluded, "...it is my clinical opinion there is post-service evidence from the VA of diagnoses of PTSD and another mental health condition that may be attributed to military service. There is insufficient evidence to attribute his misconduct to a PTSD or another mental health condition."

Following a review of your robust AO rebuttal, the Ph.D. did not change or otherwise modify their original AO.

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 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 explained in the AO, your history of misconduct preexisted your combat deployment and continued afterward. 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 cumulative 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 also noted that VA eligibility determinations for health care, disability compensation, and other VA-administered benefits are for internal VA purposes only. Such VA eligibility determinations are not binding on the Department of the Navy and have no bearing on previous active duty service discharge characterizations.

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 1.0 (out of a possible 5.0) in conduct. Navy regulations in place at the time of your discharge recommended a minimum trait average of 2.50 in conduct (proper military behavior), for a fully Honorable characterization of service. The Board concluded that 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 and a repeated failure to conform to basic military standards of good order and discipline, all of which 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. 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 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 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,

10/16/2024

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Executive Director
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