



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. 6591-24
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 21 March 2025. 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 the advisory opinion (AO) furnished by a qualified mental health provider and your AO rebuttal submission.

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 took your oath of office and commissioned as an Ensign in the U.S. Navy Medical Corps (NMC) on or about 12 July 2010 when you contracted for the Armed Forces Health Professions Scholarship Program (AFHPSP). As part of the AFHPSP, you were entitled to: (a) a monthly stipend, (b) pay/allowances of Ensign (O-1) during ACDUTRA for each 12 months participation in AFHPSP, and (c) have all educational expenses paid that the U.S. Navy deemed normal and required, including tuition, required books and fees, and laboratory expenses, but excluding personal living expenses.

On or about 25 May 2014, you graduated from ██████████ Medical School, in ██████████. On or about the same day, you were promoted to the rank/grade of Lieutenant (O-3) in the NMC.

Per your counsel's provided timeline, in or around August 2019, the Navy initiated/conducted fraternization investigation into your unduly familiar activities and conduct with a junior enlisted Sailor, working in your Department at Naval Medical Center ██████████, that did not respect the differences between rank and grade.

On or about 6 November 2019, the fraternization victim filed a sexual harassment complaint using the Navy Equal Opportunity and Sexual Harassment Report (NAVPERS 5354/2). This report initiated a parallel investigation ("CMEO Investigation") into certain facts surrounding your misconduct surrounding your fraternization.

On 24 January 2020, the investigating officer (IO) for the CMEO Investigation substantiated the victim's complaint that certain instances of your behavior constituted sexual harassment.

You received a fitness report (FITREP) for the period ending 31 January 2020. Your cumulative trait average was only 3.17 out of a possible 5.0, while the summary group average was 3.73. You were rated "Significant Problems," and numerically ranked in the bottom 20% of fellow officers in a summary group of ten (10) officer peers. The block 41 comments stated, in part:

During this reporting period, evidence demonstrated an inappropriate relationship with an enlisted Sailor in his department that undermined good order and discipline in the department and command.

On 21 May 2020, you received non-judicial punishment (NJP) for: (a) three (3) separate specifications of fraternization with a junior enlisted Sailor (UCMJ Art. 134), (b) cruelty and maltreatment (UCMJ Art. 93), and (c) extramarital sexual contact (UCMJ Art. 134). You were found guilty of all three (3) fraternization specifications and the cruelty/maltreatment charge. As punishment, you were awarded a punitive letter of reprimand (PLR). You did not appeal either the NJP findings, or the PLR.

On 10 Jun 2020, the Commanding Officer, ██████████ ██████████ issued you the PLR. The PLR outlined the details of your fraternization misconduct underlying your NJP, in part, as follows:

From approximately February through June 2019, you were in an unduly familiar relationship with a female Hospital Corpsman Third Class Petty Officer (HM3).

The relationship was largely the result of you both being assigned to the Emergency Department onboard ██████████. Over the course of your relationship, you engaged in sexual acts with the HM3, you extensively discussed the intimate aspects of your personal and professional lives over various forms of electronic communications, and you lived in the HM3's apartment for approximately two weeks. One particularly egregious aspect of your relationship with this HM3 was that, despite your position as a superior officer and as a physician, you repeatedly spoke about and undermined fellow Sailors and Officers as part of your communications. Further, when the HM3 sought to end the relationship, you continued to seek her companionship and affection despite her clear communication that she did not want to continue a relationship with you. Your insistence on continuing the relationship caused her severe emotional distress, until she finally sought assistance from her enlisted chain of command. This behavior will not be tolerated as it erodes the very foundation upon which good order and discipline is built. Your actions in this matter brought discredit to you, the Medical Corps, and the Navy. Accordingly, you are hereby reprimanded.

In the Report of NJP (NJP Report) dated 20 July 2020, ██████████ initially recommended to the Show Cause Authority ("SCA" or PERS-834) that you be required to show cause for retention in the naval service. NMRTC did not recommend that you be detached for cause and did not make any recommendation regarding any promotion. On 2 August 2020, you submitted comments in response to the NJP Report, wherein you requested, in part, that you not be required to show cause for retention.

On 18 September 2020, you appealed the CMEIO Investigation findings of a substantiated sexual harassment complaint to the Chief, Bureau of Medicine and Surgery (BUMED). In your BUMED appeal letter, while you admitted that you and the HM3 had a brief, consensual, and inappropriate relationship, you argued that at no time did you sexually harass her. You further contended, in part, that the substantiated sexual harassment claims made against you were based upon an incorrect application of existing DoD or DoN regulations.

On 23 September 2020, Commander, Navy Personnel Command informed you that the Secretary of the Navy (SECNAV) was withholding your promotion nomination.

The SCA determined there was sufficient evidence of record to separate you from the naval service. On 28 September 2020, the SCA initiated administrative action to separate you as a Probationary Officer (PO) based on: (a) misconduct due to the commission of certain military offenses, and (b) substandard performance of duty, given your inability to maintain adequate levels of performance as evidenced by your failure to conform to prescribed standards of military department. The least favorable discharge characterization you could receive was General (Under Honorable Conditions) ("GEN") and the SCA recommended that you should receive a GEN characterization of service.

On 16 October 2020, you submitted a rebuttal statement along with supporting materials to the SCA. On 24 November 2020, ██████████ recommended to the SCA that you receive a GEN discharge characterization.

On 5 April 2021, the Deputy Chief of Naval Personnel (CNP) recommended to the Assistant Secretary of the Navy for Manpower and Reserve Affairs (ASN (M&RA)) that you be separated with a GEN discharge characterization. Additionally, CNP recommended that ASN (M&RA) also approve the recoupment of the remaining balance of your community managed bonuses, as applicable. CNP's recommendation noted that the estimated remaining pro rata cost of your government-funded medical education was approximately \$158,910.29; as of 1 December 2020. CNP summarized the misconduct underlying your administrative separation, in part, as follows:

On May 21, 2020 NJP was imposed on [Petitioner] for violation of [UCMJ] Article 93 (cruelty and maltreatment), and Article 134 (fraternization) (three specifications). Specifically, from February 2019 through June 2019, [Petitioner] maintained an unduly familiar relationship with a junior enlisted Sailor, a woman not his spouse. During this time, he engaged in sexual acts, discussed intimate aspects of his personal and professional life, spoke negatively of fellow Sailors and officers to her, and lived with the female Sailor for a two-week period. Despite clear communication from the female Sailor expressing her desire to not continue the relationship, he continued to pursue a relationship with her. This caused extreme emotional distress resulting in the female Sailor requesting assistance from her chain of command. [Petitioner] was awarded a punitive letter of reprimand and did not appeal.

On 21 April 2021, ASN (M&RA) approved CNP's recommendations.

On 7 May 2021, the Chief, Bureau of Medicine and Surgery (BUMED) granted your appeal regarding the sexual harassment claim that was the subject of the parallel CMEI Investigation. BUMED found that the evidence did not support a finding of sexual harassment as defined in the OPNAVINST 5300.13 instruction. BUMED determined that your text messages and handwritten letter did not rise to the level a reasonable person would find such conduct severe, pervasive, or repeatedly unwelcome as articulated in OPNAVINST 5354.1G. Despite granting your appeal, BUMED admonished you by noting that your overall behavior was not in keeping with the medical profession and offended the basic tenants of naval leadership. BUMED further stated the following:

You exploited your position as an officer in pursuing a romantic and entirely inappropriate relationship with HM3 ████████, an enlisted sailor with whom you worked. This conduct is harmful not only to the members involved in the relationship but it undermines confidence and discipline in the command and in the United States Navy. I expect more professionalism and greater military bearing from my medical officers, and I find your behavior wholly unacceptable as a physician and as a Naval officer.

Ultimately, on 30 June 2021, you were discharged from the Navy for misconduct at the rank/grade of O-3 with a GEN characterization of service.

On 1 November 2022, the Naval Discharge Review Board (NDRB) denied your initial discharge upgrade application. The NDRB determined, in part, (a) that your mental health

conditions/experiences did not mitigate the misconduct underlying your discharge, and (b) there was not a mitigating nexus between your misconduct and your mental health conditions and/or experiences.

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 to remove any evidence of a sexual harassment claim from your record. You contend that: (a) the board should remove evidence of a sexual harassment claim from your military record since it was successfully appealed, (b) the denial of your requests would be contrary to law, regulation, and previous case decisions, (c) the Navy failed to follow the regulated timeline for issuing an appellate decision regarding a sexual harassment claim, (d) you were prevented from showing your successful appeal at your NJP and during your administrative separation processing due to the Navy's delay in processing, (e) you were not treated with the same parity as another officer being processed for separation for similar misconduct, (f) your misconduct was isolated to one person while you were struggling with your mental health, (g) your documented mental health issues mitigated the misconduct underlying your NJP and administrative separation, (h) your remaining military service was reliable and generally met the standards of acceptable conduct and performance for naval personnel, (i) your peers opined that you had the rehabilitative potential to continue serving, and (j) your triggered recoupment of certain medical school expenses was unduly harsh. 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 2 November 2024. As part of the Board's review, the Board considered the AO. The AO stated in pertinent part:

Petitioner contends that he incurred mental health issues during military service, which may have contributed to the circumstances of his separation from service.

In March 2019, Petitioner voluntarily sought psychotherapy for complaints of symptoms of depression related to work and marital stressors. He was subsequently diagnosed with Adjustment Disorder with Depressed Mood.

Review of his record notes that from February to June of 2019, Petitioner engaged in an "unduly familiar" relationship with an enlisted Corpsman. Per report of NJP dated May 2020, "He repeatedly engaged in intimate online communications with the Third Class Petty Officer. When the Third Class Petty Officer sought to end the relationship, [Petitioner's] insistence on continuing the relationship caused her severe emotional distress."

There is evidence that the Petitioner was diagnosed with Adjustment Disorder with Depressed Mood and Alcohol Use Disorder while in service. However, knowingly engaging in fraternization cannot be said to have been caused by an Adjustment Disorder. Additionally, it does not appear as though Alcohol Abuse was a regular concern, and per psychotherapy notes, he was able to maintain sobriety after the June 2019 incident. The Petitioner admitted that he engaged in an inappropriate

relationship with an enlisted person and there is no evidence that he himself was a victim of harassment or that he was coerced into the relationship.

The AO concluded, "...it is my clinical opinion that there is sufficient evidence of a mental health condition that existed during military service. There is insufficient evidence to attribute his misconduct to a mental health condition."

Following a review of your AO rebuttal submission, 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 consideration¹ 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 fraternization misconduct that partially formed the basis of your discharge. In particular, the Board noted that your misconduct preceded the onset of your mental health symptoms and it is difficult to attribute your behavior to a mental health condition. As a result, the Board concluded that your fraternization misconduct was not due to mental health-related conditions or symptoms. Additionally, 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 over an extended period of time was intentional and willful and demonstrated you were unfit for further service. Moreover, the Board concluded that your fraternization with an enlisted female was not the type of misconduct that would be excused or mitigated by mental health conditions even with liberal consideration. The Board also determined that the evidence of record did not demonstrate: (a) that you were unaware of your unique leadership responsibilities as a naval officer, (b) that you were not mentally responsible for your conduct, or (c) that you should not be held accountable for your actions.

The Board noted your contention that any discussion of narcissistic personality traits in the AO was arbitrary and should be disregarded. However, the Board noted that such traits were acknowledged by you during a December 2019 appointment with a military psychologist and, thus, were relevant in the consideration of your misconduct.

The Board also noted your contention that it is arbitrary and capricious for the AO to conclude that engaging in fraternization cannot be said to have been caused by an adjustment disorder. However, the Board noted that fraternization, in part, involves prohibited personal relationships

¹ During its deliberations, the Board employed, in part, the 4-question analysis as listed in the Kurta Memo to adjudicate your mental health claims: (a) was there a condition or experience that may excuse or mitigate the discharge?, (b) did that condition exist/experience occur during military service?, (c) does that condition/experience actually excuse or mitigate the discharge?, and (d) does that condition or experience outweigh the discharge?

between officer and enlisted members that are unduly familiar and that do not respect differences in grade or rank. An adjustment disorder indicates the development of emotional or behavioral symptoms in response to an identified stressor. The Board noted in your case that your marital difficulties and occupational stressors were identified as the precipitants. However, the Board determined that while your stressors did contribute to emotional distress, your mental health concerns developed after you engaged in misconduct, rather than caused your behavior, which was obviously and wholly relevant in the consideration of the your contentions.

The Board determined that there was no convincing and/or credible evidence in the record regarding any command misconduct, improper motives, or abuses of discretion in the investigating, handling and processing of your misconduct and your subsequent administrative separation. The Board determined that your administrative separation for both misconduct and substandard performance of duty was legally and factually sufficient. The Board also determined that your contentions regarding any actual or perceived disparate command treatment between your case and another officer's case were not persuasive. The Board also noted that the NDRB case cited in your counsel's brief was a case involving a denial of relief and the Board determined that citing such "precedent" was adverse to your interests.

The Board concluded that any arguments regarding the timing of the CMEI Investigation processing, the ultimate sexual harassment determination in May 2021, and their impact on how that may/would have changed your NJP or your ultimate discharge were speculative at best. The Board noted that the behavior underlying your three (3) separate fraternization specifications adjudicated at NJP were substantiated and not in dispute. The Board unequivocally determined that the undisputed, multiple fraternization offenses standing alone (without any consideration of the impact of the cruelty/maltreatment/sexual harassment offense on your discharge and/or characterization) were more than sufficient to separate you with a GEN discharge. In fact, the Board determined that you were fortunate to be a probationary officer because your fraternization offenses could just have easily earned you an under Other Than Honorable conditions (OTH) discharge characterization had you met certain administrative and career criteria. Lastly, the Board concluded that even if you were able to present the successful appeal of the CMEI Investigation at either your NJP hearing or during your administrative separation processing, such appeal results would in no way have resulted in a more favorable NJP result or a higher discharge 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 your substantiated fraternization offenses clearly demonstrated you had minimal potential to contribute positively to the Navy as an officer responsible for the care and well-being of enlisted Sailors. The Board also determined that your substantiated misconduct and total lack of judgment was not just an isolated incident, and the record reflected you engaged in such misconduct over an extended period of time. The Board determined that characterization under GEN or 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 naval officer. Moreover, absent a material error or injustice, the Board declined to summarily upgrade a discharge solely for the purpose of facilitating VA or 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.

Based on its finding that you were properly discharged for misconduct, the Board denied your request to forgive the recoupment of the outstanding pro rata remainder of your medical school-related expenses paid for by the Navy. The Board noted that you voluntarily signed an agreement that provided for the Navy to cover certain financial costs associated with your [REDACTED] medical education. In return, you were obligated to complete a specified service obligation. In the event that you did not complete your contractual obligations, you knew you would be required to reimburse the Navy on a pro rata basis. After reviewing the totality of the evidence you provided, the Board unfortunately found no compelling or equitable reason to absolve you of your contractual responsibilities.

The Board also denied your request to remove certain adverse/derogatory material from your service record. The Board noted that your fraternization offenses were adjudicated administratively and not via a criminal forum. The Board determined the fact that your sexual harassment appeal related to the parallel CMEIO Investigation was ultimately granted was of no consequence to your request. As previously outlined, above, the Board determined your separation was legally and factually sufficient, and that your three (3) separate substantiated fraternization specifications alone clearly justified your separation with a GEN discharge characterization. The Board concluded that there is no undue harm, prejudice, error, or injustice in keeping documents related to either your NJP, administrative separation, or CMEIO Investigation in your service record; regardless of the contents of such documents or the results of the successful CMEIO Investigation appeal.

Therefore, 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,

4/4/2025
