



**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: 1321-21

Ref: Signature Date



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 your application was not filed in a timely manner, the Board found it in the interest of justice to waive the statute of limitations and consider your application on its merits. A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 3 September 2021. 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), and the relevant Advisory Opinion and your response to the Advisory Opinion.

You enlisted in the Navy and began a period of active duty service on 13 September 2001. Your evaluation for the period of 12 December 2001 through 15 July 2002, stated in part that your performance has clearly been outstanding and you unquestionably possessed the talent and initiative to perform in challenging positions. On 24 October 2002, you were found guilty at summary court martial for a period of unauthorized absence (UA) from 13-17 October 2002, disrespect to a superior commissioned officer, two specifications of disobeying a lawful order and disrespect in language to a superior petty officer on or about 13 October 2002, wrongfully possessing marijuana, and disorderly conduct. The summary court martial sentenced you to

reduction in rank, forfeiture of \$850 pay per month for one month, and confinement for 30 days. Your evaluation for the period of 16 July 2002 through 11 November 2002, included a reference to a summary court martial and to the fact that you were being administratively separated with an other than honorable discharge due to drug abuse and a commission of a serious offense. On 5 November 2002, Commander, Carrier Group █ authorized your discharge. On 11 November 2002, you were discharged from the Navy on the basis of misconduct, and received an other than honorable characterization of service and a reentry (RE) code of RE-4.

In your application to the Board, you request an upgrade to your other than honorable characterization of service. You believe that your record is erroneous or unjust because you were hospitalized before you were discharged for misconduct. You state that you had a mental breakdown due to the bombing of the Twin Towers in New York, and were in a “state of incompetency.”

As part of the review process, a Physician Advisor reviewed your request and issued an Advisory Opinion dated 11 July 2021. The Advisory Opinion considered your allegation that you suffered from a mental health condition during your military service which might have mitigated your misconduct that led to an other than honorable characterization of service. The Advisory Opinion noted that your in-service records did not contain evidence of a diagnosis of a mental health condition or psychological/behavioral changes. Furthermore, the Advisory Opinion considered your claim of psychological duress/mental breakdown due to the bombing of the Twin Towers in New York but noted that you began your enlistment on 13 September 2001, and successfully completed your initial training in the months following the 9/11 attacks. The Advisory Opinion concluded that based on the available evidence, the preponderance of objective evidence failed to establish that you suffered from a mental health condition at the time of your military service or that your misconduct was mitigated by a mental health condition. The Advisory Opinion was provided to you, and you were given 30 days in which to submit a response. When you did not provide a response within the 30-day timeframe, your case was submitted to the Board for consideration.

The Board carefully considered all potentially mitigating factors to determine whether the interests of justice warrant relief in your case in accordance with the Wilkie Memo. These included, but were not limited to your contention that you suffered from a mental breakdown due to the attacks of 9/11. The Board reviewed your application and your available service record, noting the timing of your active duty service, your initial favorable evaluation comments, and your misconduct as documented in your summary court martial conviction. Even in consideration of your assertions, the Board substantively concurred with the Advisory Opinion and determined that you did not provide sufficient evidence to establish that you suffered from a mental health condition during your naval service that mitigated your misconduct. The Board concluded that the nature of your misconduct (specifically disrespect, wrongful possession of a controlled substance and disorderly conduct) supported your receipt of an other than honorable characterization of service. The Board determined that your current discharge was issued without error or injustice, and that an upgrade is not warranted.

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,

9/29/2021

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Executive Director

Signed by: █