



**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: 5634-21

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 February 2022. 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, which was previously provided to you. Although you were afforded an opportunity to submit an AO rebuttal, you did not 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 originally enlisted in the Navy on 7 August 1990. Your pre-enlistment medical examination on 29 January 1990 and self-reported medical history noted no psychiatric or neurologic

conditions or symptoms. During your first enlistment you received non-judicial punishment (NJP) on 26 June 1991 and 1 May 1992 for insubordinate conduct, provoking speeches and gestures, and unauthorized absence (UA), respectively. Two of your commands also issued you a total of five separate "Page 13" counseling warnings (Page 13) for various personal and professional shortcomings. Each Page 13 expressly warned you that any further deficiencies in performance and/or conduct may result in disciplinary action and in processing for administrative discharge.

You reenlisted on 4 November 1993 for four years. On 30 December 1993 you reported for duty on board the █ in █.

On 24 January 1995 you received NJP for two specifications of insubordinate conduct towards a first class petty officer. On 5 February 1995 your command issued you a Page 13 documenting your misconduct and expressly warning you that any further deficiencies in performance and/or conduct may result in disciplinary action and in processing for administrative discharge. On 6 January 1996 you received NJP for UA. On 13 May 1996 you received NJP for UA, insubordinate conduct toward a chief petty officer, and communicating a threat towards a chief petty officer.

On 20 May 1996 your command notified you that you were being processed for an administrative discharge by reason of misconduct due to the commission of a serious offense, and misconduct due to a pattern of misconduct. You expressly waived your rights to consult with counsel and to request an administrative separation board. In the interim, your separation physical examination on 28 May 1996 and self-reported medical history both noted no neurologic or psychiatric conditions or symptoms. Ultimately, on 2 July 1996 you were discharged from the Navy for a pattern of misconduct with an other than honorable conditions (OTH) characterization of service and assigned an RE-4 reentry code.

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 23 December 2021. The Ph.D. initially noted that your active duty records did not contain evidence of a mental health condition diagnosis or reported psychological symptoms/behavioral changes indicative of a diagnosable mental health condition. The Ph.D. concluded by opining that the evidence failed to establish you suffered from a mental health condition on active duty or that your in-service misconduct could be mitigated by a mental health condition.

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 served honorably from 1990-1993 with a good conduct award, (b) you rose to the rank of petty officer third class (E-4), and (c) your supervisor on board the █ had an agenda against you and would also belittle you. However, given the totality of the circumstances, the Board determined that your request does not merit relief.

In accordance with the Kurta, Hagel, 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 that you suffered from any type of mental health condition while on active duty, or that any such mental health condition was related to or 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 symptoms. Moreover, the Board observed that you did not submit any clinical documentation or treatment records to support your mental health claims despite a request from BCNR on 20 September 2021 to specifically provide additional documentary material. The Board determined the record clearly reflected that your active duty misconduct was willful and intentional 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 otherwise not be held accountable for your actions.

Additionally, the Board noted that there is no provision of federal law or in Navy/Marine Corps regulations that allows for a discharge to be automatically upgraded after a specified number of months or years. The Board did not believe that your record was otherwise so meritorious as to deserve a discharge upgrade. 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. Lastly, absent a material error or injustice, the Board declined to summarily upgrade a discharge solely for the purpose of facilitating VA benefits, or enhancing educational or employment opportunities. The Board carefully considered any matters submitted regarding your post-service conduct and accomplishments, however, even in light of the Wilkie Memo and reviewing the record holistically, the Board still concluded that given the totality of the circumstances your request does not merit relief. Accordingly, the Board determined that there was no impropriety or inequity in your discharge, and even under the liberal consideration standard for mental health conditions, the Board concluded that your misconduct clearly merited your receipt of an OTH.

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,

2/11/2022

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Executive Director  
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