



**DEPARTMENT OF THE NAVY**  
BOARD FOR CORRECTION OF NAVAL RECORDS  
701 S. COURTHOUSE ROAD, SUITE 1001  
ARLINGTON, VA 22204-2490

██████████  
Docket No: 5942-21  
Ref: Signature Date

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██  
██

Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to Title 10, United States Code, Section 1552. 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 Board waived the statute of limitations 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 18 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 the 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 to 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). The Board also considered the advisory opinion (AO) furnished by a qualified mental health provider which was previously provided to you. You were afforded an opportunity to submit a rebuttal to the AO but did not.

You enlisted in the Navy began a period of active service on 1 June 1995. Your record reflects that you served without incident until 18 March 1996, at which time you received nonjudicial punishment (NJP) for violations of Article 121, wrongful appropriation, and Article 134, obtaining services under false pretenses. At the time of your NJP, you were notified of proposed administrative separation action and advised of your rights and privileges. You elected to waive your right to consult with legal counsel, to have your case heard before an administrative board, and to submit a written statement for consideration on your behalf. Your commanding officer

(CO) transferred you to the local Transient Personnel Unit pending action. In his message forwarding his recommendation for your administrative separation for commission of a serious offense, your CO indicated his opinion that he did not “personally think [you] should be discharged under these conditions” and that his unofficial reason for recommending your discharge was based on your immaturity and his belief that you would use the system to escape your contractual commitment. He specified that he was not willing to assume the risk that you might harm yourself to attain a discharge and that fellow service members had heard you stating, “that gives me the right to kill myself,” in response to the fact that he “didn’t kick [you] out.” You were also overheard stating that you would continue to steal and do whatever it took to get discharged. The recommendation for your separation was approved by Commander, Naval Personnel Command, on 27 March 1996, and you were discharged on 15 April 1996 with an other than honorable characterization of service by reason of misconduct due to commission of a serious offense.

The Board carefully weighed all potentially mitigating factors, such as your desire to upgrade your characterization of service and your contention that you suffered an undiagnosed mental health (MH) condition during your military service which began within your first week of basic training, that you continually advised your chain of command of your MH concerns but felt that no one listened, and that you eventually tried to commit suicide and were ultimately placed into a MH facility and prescribed MH medication pending processing for discharge. The Board noted your post-service clemency matters to include your youth and immaturity at the time of discharge over 25 years ago, the opinion expressed by your CO at the time of your processing, and the matters you submitted which reflect that you are the owner of an academy of early learning accredited by Bright Starts.

Because you contend a mental health condition either incurred in or aggravated by active military service, the Board also considered the AO, which reviewed your service records and the supporting documents submitted with your request. The AO observed that, although you contend you were placed in a “mental facility” prior to discharge, your in-service records contain no evidence of diagnosis of any MH condition or any reported psychological symptoms or behavioral changes indicative of a diagnosable condition. The AO noted that you did not provide your in-service medical records for review in support of your contention, nor did you provide evidence of a post-service diagnosis of any MH condition. To the extent that you contend you attempted to commit suicide, the AO clarified that the sole evidence available for consideration indicates only that you threatened to do so, or alternatively to continue committing misconduct, unless your CO discharged you.

As a result, the Board concurred with the AO and determined that the preponderance of available evidence failed to establish that you suffered from any mitigating MH condition at the time of your military service which might have mitigated your misconduct. Further, the Board noted that a mental health condition would not normally mitigate premeditated misconduct such as larceny or theft of service absent a clear nexus. Based upon the totality of its review, the Board concluded the potentially mitigating factors you submitted were insufficient to warrant relief. Specifically, the Board determined that your misconduct evidenced by your NJP for commission of a serious offense, outweighed the mitigating factors you presented. Accordingly, given the totality of the circumstances, the Board determined that your request does not merit relief.

