



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

█  
Docket No: 7293-21

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 limitations 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 March 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 1 October 2003. Your pre-enlistment medical examination on 12 September 2003 and self-reported medical history noted no psychiatric or neurologic conditions or symptoms.

On 3 September 2004 you were issued a █ Uniform Summons █ for speeding. You paid a fine and court costs. In October 2004 you were offered financial counseling due to a rapid amount of debt incursion. According to your commanding officer (CO), it became evident that you were not disclosing to the Command Financial Counselor (CFC) all of your financial obligations. The CFC personally contacted your known creditors to lower your loan finance rates to reduce your monthly payments.

On 11 November 2004 you were involved in a motor vehicle accident when you were driving a car owned by another military member and you did not have permission to drive such vehicle. Two female passengers were injured and required medical attention. You were cited for failing to obey a traffic signal and you paid a fine and court costs.

In December 2004 your command discovered that you had incurred an additional loan for several thousand dollars through a local furniture store. Your command referred you to the Fleet and Family Services Center for financial/budget counseling and payment plan options for your numerous creditors. On 9 December 2004 your command issued you a "Page 13" counseling warning (Page 13) documenting your financial irresponsibility, unsatisfactory performance, and substandard military bearing. The 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.

On 10 April 2005 and 14 May 2005 you were issued a total of █ for moving violations and you pleaded guilty and paid a fine and court costs for each ticket. However, on 28 April 2005 you were issued a █ for reckless driving, a criminal offense in █. You were caught driving 85 mph in a 45 mph zone on a road adjacent to two schools conducting early dismissals. On 1 June 2005 you were convicted and sentenced to 90 days in jail (partially suspended), a suspended license for ten days, one year of probation, and you paid a fine and court costs. When you began your confinement in █ your command placed you in an unauthorized absence (UA) status until your confinement ended on 6 June 2005.

On 7 June 2005 your command notified you that you were being processed for an administrative discharge by reason of misconduct due to a civilian conviction. You expressly waived your rights to consult with counsel and to request General Courts-Martial Convening Authority review of your proposed separation. Ultimately, on 17 July 2005 you were discharged from the Navy for misconduct with a general (under honorable conditions) (GEN) 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 16 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. noted that the post-service VA medical records you submitted did not support a PTSD diagnosis and appeared to be related to situational circumstances and not military service. 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 Ph.D. separately opined that your narrative reason for separation appeared appropriate considering you were discharged for a civil conviction related to your reckless driving offense.

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 your contentions that: (a) your discharge and narrative reason for separation should be changed because the main issues you experienced involved financial issues and how you weren't able to manage it; (b) financial issues should not be in the misconduct category; (c) your finances and immaturity are not misconduct; (d) you handled and took care of all of your traffic tickets; (e) there were plenty of other punishment/disciplinary options other than an administrative separation for misconduct; (f) at the time you were going through a lot of emotional distress and felt like there was no type of guidance; and (g) post-service you kept jumping from job to job and now you have temper problems. 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. The Board also noted that your reckless driving conviction squarely met the criteria for a civil conviction to provide a basis for your administrative separation, and was more than just a routine traffic ticket. 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 GEN or other than honorable (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

