



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

██████████  
Docket No: 7560-21  
7456-99  
7737-92  
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 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 6 May 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). The Board also considered the advisory opinion (AO) furnished by a qualified mental health provider and your documents in rebuttal.

You enlisted and began a period of active duty in the Navy on 23 May 1974. Prior to enlisting you disclosed two head injuries due to car accidents. On 25 March 1975, you received nonjudicial punishment (NJP) for an eight day unauthorized absence (UA) and missing movement in violation of Articles 86 and 87, Uniform Code of Military Justice (UCMJ). Your second NJP occurred, on 25 August 1975, for being drunk in public and incapacitated for the performance of duties in violation of Article 134, UCMJ. On 4 January 1976, you received a third NJP for willfully disobeying an order from a Petty Officer and a Chief Petty Officer in violation of Article 91, UCMJ. You entered a UA status on 20 April 1976, were apprehended on 11 August 1976, and delivered to

military authorities on 18 August 1976. Your enlisted performance record indicates you received your final NJP on 18 August 1976. On 10 September 1976, you were delivered to civil authorities concerning charges of strong arm robbery. Your command initiated administrative separation processing. Although your service record does not include the documentation for your administrative separation, in the absence of evidence to the contrary, the presumption of regularity applies to establish that this action was proper and that you were afforded all due process rights. On 28 September 1976, you were discharged with an Other Than Honorable (OTH) characterization of service. You were previously denied relief by this Board on 31 March 1993 and 9 August 2000.

You contend that you had TBI due to two serious car accidents that you disclosed to the Navy prior to enlistment, and this condition contributed to your misconduct. You state you developed PTSD in-service due to several traumatic events that include almost being blown off the ship's deck, injuring your ankle and being placed in a full leg cast, a ship collision that resulted in Sailors being killed and badly injured, and close mishaps on ship that were narrowly avoided. You further contend that you were innocent of the civil charges and, that as of 25 years ago, the charge was still on your record.

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 contentions noted above and desire to upgrade your discharge.

The Board also relied on the AO in making its determination. The AO noted in pertinent part:

Petitioner's in-service records revealed an enlistment physical examination in which the Petitioner described himself in "good health" and did not endorse any history of mental health symptoms or conditions, or evidence of substance abuse. He reported a pre-enlistment history of head trauma and hospitalization from a car accident with loss of consciousness, hospitalization, "250 stitches to repair scalp laceration," fractures, and concussion. The examining physician noted the Petitioner denied any sequelae from the accident, that his physical examination was within normal limits, noted his scar across his forehead, and that he was medically qualified for enlistment. On 6/9/74, he was seen in sickbay for headaches, which were assessed as "sinus headaches" and treated conservatively. On 6/18/74, he was evaluated in the Optometry Clinic at Recruit Training Command for classification of his vision status. He reported two car accidents pre-enlistment that resulted in "stitches, fractures, unconsciousness, headaches, and double vision for a week after the second accident. He stated he had headaches "on and off" not consistent, but "real bad" when they occurred. He was recommended for bifocals. On 3/25/75, he underwent a confinement physical evaluation and denied any health concerns or conditions and was found fit for confinement to the brig. On 4/16/75, he was seen in his ship's sickbay with complaints of 1.5-2 months of insomnia since he came aboard three months prior. He was noted to "not have any major psych problems." He was treated with two nights of sleep pills and referral to the medical officer if he did not improve. On

his Separation Physical Examination, the examining physician did not document any medical or mental health conditions and deemed him medically qualified for separation.

Petitioner's service records revealed that following his car accidents, he successfully graduated from high school, met enlistment standards including medical/physical requirements and required scores on the ASVAB. He successfully completed his requirements and graduated from Initial Recruit Training, as well as Aviation Fundamentals School and Aviation Mechanic "A" School. Upon assignment to an aircraft carrier, he successfully met requirements to qualify as Plane Captain, a position of significant responsibility. His available evaluations consistently recommended him for promotion with marks ranging from 3.0-3.6 (low marks in behavior corresponding to periods of misconduct).

Petitioner provided clinical documentation from 2017-2019 of post-discharge diagnoses of PTSD, Major Depression, TBI, and Insomnia with opinions these conditions might have affected his in-service performance and behavior forty years prior to the evaluations. Medical and Service Records contemporary to his enlistment did not contain diagnosed medical or mental health conditions, or symptoms/behavioral changes that over time would indicate a medical or mental health condition. He met physical standards for enlistment and retention, succeeded in and graduated from each level of service schools, and in his occupational specialty, with average to above average performance marks and recommendations for promotion, up until his misconduct. Throughout his counselings, disciplinary, and administrative processing, there were no concerns raised, which would have referred him for evaluation for medical, or mental health conditions. At no time pre-service, in-service, or post-discharge was the Petitioner ever considered unfit for duty or not responsible for his actions.

Though his pre-enlistment history of head trauma was well documented, the clinical and non-clinical evidence contemporary to his military service suggested that any existing residual symptoms did not rise to the level of occupational impairment or mitigation of his in-service misconduct. The lack of details regarding his reported traumatic experience of a ship collision, specifically when it occurred, makes it difficult to opine what misconduct could have been mitigated as a result of PTSD from the experience. Additional information, such as post-service treatment records clarifying the Petitioner's mental health diagnosis and its specific link to his misconduct, are required to render an alternate opinion. Should the Petitioner choose to submit additional records, they will be reviewed in context of his claims.

The AO concluded, "based on the available evidence, it is my considered medical opinion there was evidence of post-discharge diagnoses of PTSD, incurred in-service, and TBI, incurred preenlistment. However, there was insufficient evidence supporting Petitioner's contention that his

