



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

█  
Docket No: 0234-22  
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 April 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 an advisory opinion (AO) from a qualified mental health professional, which was previously provided to you. Although you were afforded an opportunity to submit a 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 enlisted in the Navy and began and honorably completed a period of active duty from

10 August 1979 to 8 August 1983. You reenlisted and commenced a second period of active duty on 9 August 1983. On 7 December 1983, you received your first nonjudicial punishment (NJP) for a period of unauthorized absence (UA) lasting less than 24 hours. On 21 June 1985, you received your second NJP for a period of UA totaling 39 days, for missing ship's movement, and for destroying government property. As a result, you received an administrative remarks in your official military personnel file (OMPF) for this deficiency. The remarks further captured you were being retained in the naval service and advised you that any further misconduct may result in processing for administrative separation. On 20 November 1985, you received a third NJP for an additional period of UA. On 16 December 1985, you were found guilty at a summary court-martial (SCM) for a fourth period of UA and for breaking restriction. You were sentenced to confinement at hard labor for 30 days and to be reduced in rank to E-1. On 18 December 1985, you were notified of your pending administrative separation due to commission of a serious offense (COSO) and pattern of misconduct (POM) and you waived all of your procedural rights. Your commanding officer (CO) subsequently recommended to the discharge authority that you be separated with an other than honorable (OTH) discharge for COSO and POM, adding, "such misconduct is incompatible with the maintenance of high standards of performance, military discipline and readiness and is destructive of Navy efforts to instill pride and professionalism." On 24 January 1986, the discharge authority directed you be separated with an OTH by reason of Misconduct – Pattern – Frequent Involvement of a Discreditable Nature with Civil or Military Authorities and, on 2 February 1986, you were so discharged.

The Board carefully considered all potentially mitigating factors in your petition to determine whether the interests of justice warrant relief in your case in accordance with the Wilkie Memo. In your petition you contend at the time of your discharge you were suffering from PTSD and depression. You add, you were treated and diagnosed while a patient at █ but relapsed and were unstable at the time of your discharge.

In connection with your assertion that you suffered from PTSD, the Board requested, and reviewed, the AO. The AO reviewed your service record as well as your petition and the matters that you submitted. According to the AO:

In service, the Petitioner was diagnosed with a substance use disorder, for which he received treatment. Throughout his disciplinary processing, there were no concerns raised of additional mental health conditions that would have warranted a referral for evaluation. The Petitioner has provided no post-service medical evidence in support of his claims. Unfortunately, his personal statement is not sufficiently detailed to establish a nexus with his misconduct. Additional records (e.g., post-service mental health records describing the Petitioner's diagnosis, symptoms, and their specific link to his misconduct) are required to render an alternate opinion.

The AO concluded, “based on the available evidence, it is my clinical opinion that there is insufficient evidence that he may have incurred PTSD or another unfitting mental health condition during military service. There is insufficient evidence that his misconduct could be attributed to PTSD or another unfitting 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 Wilkie Memo. These included, but were not limited to, your contentions noted above and your desire to upgrade your discharge. Based upon this review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your three NJPs and SCM, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and concluded it showed a complete disregard for military authority and regulations. Additionally, the Board concurred with the AO and found no nexus between your claimed mental health conditions and your misconduct. As a result, when weighing the evidence, the Board determined that your conduct constituted a significant departure from that expected of a sailor and continues to warrant the OTH characterization of service. Accordingly, given the totality of the circumstances, the Board determined that your request does not merit relief.

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,

4/25/2022

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Executive Director

Signed by: █