



**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: 553-22

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 17 June 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 an advisory opinion (AO) furnished by qualified mental health provider. You were provided an opportunity to submit an AO rebuttal and you did do so.

You enlisted in the Navy and commenced active duty on 9 May 1988. Your pre-enlistment physical examination, on 2 March 1988, and self-reported medical history both noted no psychiatric or neurologic conditions or symptoms.

On 9 January 1990, you received non-judicial punishment (NJP) for missing ship's movement, and an unauthorized absence (UA) that lasted 139 days. You received the maximum punishment permitted at NJP, and you did not appeal your NJP. On 9 January 1990, your command issued you a "Page 13" counseling sheet (Page 13) for your UA. The Page 13 expressly warned you

that a failure to take corrective action may result in disciplinary action and/or processing for administrative separation. You did not make a Page 13 rebuttal statement.

On 6 June 1990, you received NJP for the wrongful use of a controlled substance. You did not appeal your NJP. On 14 September 1990, you received NJP for UA lasting one day. You did not appeal your NJP.

On 20 September 1990, your command notified you that were being processed for an administrative discharge by reason of misconduct due to a pattern of misconduct. You waived your rights to consult with counsel, submit a written statement to the Separation Authority, and to request an administrative separation board. In the interim, you received NJP for UA lasting one day. You did not appeal your NJP.

On 9 October 1990, the Separation Authority approved and directed your separation for a pattern of misconduct with an Other Than Honorable conditions (OTH) characterization of service. On 11 October 1990, your separation physical examination and self-reported medical history both noted no neurologic or psychiatric conditions or symptoms. Ultimately, on 12 October 1990, you were discharged from the Navy for a pattern of misconduct with an OTH discharge and assigned an RE-4 reentry code. On 10 December 2018, the BCNR denied your initial petition for relief.

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) no less than two separate incidents you experienced on active duty caused PTSD and you were a teenager with little maturity to deal with the situations, (b) you went AWOL after the incident on the ship where the booster fell off of the missile and it began burning through the deck toward other ordinance, (c) the booster incident caused you to have flashbacks and nightmares, (d) a woman played mind games with you that caused you to go AWOL, and (e) post-service you have returned to school, obtained your GED and have obtained 59 college credits so far. For purposes of clemency consideration, the Board noted you did not provide supporting documentation describing post-service accomplishments, or advocacy letters.

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 initial AO dated 14 February 2022. The Ph.D. stated in pertinent part:

Petitioner's OMPF did not contain evidence of a diagnosis of a mental health condition. In contrast, evidence submitted by Petitioner contained evidence of a post-discharge diagnosis of PTSD. Although there does not appear to be objective evidence of the incident described by Petitioner, he did provide information of possible traumatic events aboard the ship and his misconduct occurred after the purported traumatic events. The discrepancy could be related to the passage of time; however, Petitioner described alternative reasoning for his misconduct ("mind games" the woman was playing on him).

The AO concluded, “[b]ased on the available evidence, it is my considered clinical opinion the preponderance of available objective evidence failed to establish Petitioner suffered from a mental health condition at the time of his military service or his in-service misconduct could be mitigated by a mental health condition.”

In response to the AO, you provided medical evidence documenting your diagnoses for several mental health conditions.

In accordance with the Hagel, Kurta, 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 of any nexus between any mental health conditions and/or their related symptoms and your misconduct, and the Board determined that there was insufficient evidence to support the argument that any such mental health conditions mitigated most of 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 conditions or symptoms whatsoever. Moreover, even if the Board assumed that your misconduct was somehow attributable to any mental health conditions, the Board unequivocally concluded that the severity of your misconduct far outweighed any and all mitigation offered by such mental health conditions. The Board determined the record reflected that your misconduct was intentional and willful 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 not be held accountable for your actions.

The Board was aware that character of military service is based, in part, on conduct and overall trait averages which are computed from marks assigned during periodic evaluations. Your overall active duty trait average was 2.0 in conduct. Navy regulations in place at the time of your discharge required a minimum trait average of 3.0 in conduct (proper military behavior), for a fully honorable characterization of service. The Board concluded that your conduct marks during your active duty career were a direct result of your pattern of serious misconduct which justified your OTH characterization of discharge.

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 active duty service 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. Including your drug and missing movement offenses, the simple fact remains is that you left the Navy on three separate occasions for a total of 141 days while you were still contractually obligated to serve, and you went into a UA status each time without any legal justification or excuse. 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, employment, or military enlistment opportunities. As a result, 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 the Board did not find evidence of an error or injustice that warrants upgrading your characterization of service or granting clemency in the form of an upgraded characterization of service. Therefore, the Board determined insufficient evidence exists to 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,

6/30/2022

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Executive Director

Signed by: █