



**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: 1134-22  
8619-16  
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 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 13 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 response in rebuttal.

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 and began a period of active duty in the Navy on 2 March 1989. On 30 August 1989, you received nonjudicial punishment (NJP) for breach of the peace by wrongfully engaging in a fight with another service member and failure to obey a lawful order in violation of Articles 116 and

92, Uniform Code of Military Justice (UCMJ). Your second NJP occurred, on 25 September 1990, for three specifications of unauthorized absence (UA) for a total of 18 days, theft, falsifying an official document, and missing ship's movement in violation of Articles 86, 121, 107, and 87, UCMJ. You were admitted to an inpatient psychiatry unit, from 8 November 1990 to 13 November 1990, due to a past history of suicide attempts and thoughts, and diagnosed with a Personality Disorder, Antisocial type, that did not exist prior to enlistment. You were readmitted from 14 December 1990 to 17 December 1990 due to suicidal and homicidal ideations. You were diagnosed with Personality Disorder, Antisocial type, severe. Your provider noted you were given liberty after your previous hospitalization and further reported, "UA for the past six weeks...during this time [Petitioner] has been with his girlfriend and has been out to various parties...denies abuse of alcohol or other drugs." Your provider further stated you were evaluated over the course of the four-day hospitalization and "at no time did [Petitioner] evidence ongoing symptoms of a mental illness." On 20 February 1991, you were convicted by special court martial (SPCM) of UA in excess of 30 days and theft in violation of Articles 86 and 121, UCMJ. You were sentenced to confinement for 75 days and forfeiture of \$400 pay per month for four months. On 25 April 1991, you received a third NJP. You requested mast and met with your commanding officer on 30 April 1991. During this meeting you vowed to "turn over a new leaf" and affirmed your desire to remain on active duty. As a result of this meeting, your commanding officer suspended your administrative separation processing. On 25 July 1991, you received a fourth NJP for two specifications of UA and insufficient funds in violation of Articles 86 and 123, UCMJ. You were notified of administrative separation processing and your commanding officer recommended you be discharged with an Other Than Honorable (OTH) characterization of service. Your commanding officer further stated that your violations of Article 121, UCMJ, involved stealing from your shipmates. You were discharged, on 3 September 1991, with an OTH. You previously applied to this Board for an upgrade to your characterization of service and were denied on 7 November 2017.

You contend the records note the presence of a mental health condition that occurred while you were in the military, the condition influenced your misconduct, and should be considered for the purposes of an upgrade. You state your command did not provide you with guidance and that you were not given an opportunity to correct your deficiencies. You further contend in two personal statements that due to personal problems your parents requested a humanitarian transfer so you could be close to home. You state that after your transfer, you did not receive the proper counseling and you had just experienced a family loss. You further state you are disabled. For purposes of clemency consideration, the Board noted you provided supporting documentation describing post-service accomplishments and advocacy letters.

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, post-service accomplishments, 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 OMPF did contain evidence of a diagnosis of a personality disorder. Narrative summaries from two inpatient hospitalizations reported Petitioner did not demonstrate psychological symptoms/behavioral changes indicative of an

additional mental health condition. Petitioner did not provide clarifying information about his MHC (i.e., diagnosis, symptoms experienced) and did not provide evidence to refute the in-service diagnosis. Additionally, Petitioner misconduct of theft, breach of peace, and falsifying a document are not typical types of misconduct exhibited by a person suffering from bereavement/depression.

The AO concluded, “[b]ased on the available evidence, it is my clinical opinion Petitioner’s purported MHC cannot be attributed to his military service. Furthermore, Petitioner’s misconduct/behavior cannot be attributed to a MHC.”

In response to the AO, you provided a rebuttal reiterating your argument that the records note the presence of a MHC while in the military and this influenced your conduct.

Based upon this review, the Board concluded that the potentially mitigating factors in your case were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your four NJPs and SPCM, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact you were provided a second opportunity to remain in the Navy after promising to your Commanding Officer that you would “turn over a new leaf.” Further, the Board concurred with the AO that your theft related misconduct is not typical for someone experiencing a mental health condition. Therefore, the Board concurred with the AO that your misconduct could not be attributed to a mental health condition. As a result, the Board concluded your conduct constituted a significant departure from that expected of a Sailor and continues to warrant an OTH characterization. After applying liberal consideration and considering your post-discharge accomplishments, 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. 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,

6/4/2022

[REDACTED]