



**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: 2024-22  
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 8 July 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.

You enlisted in the Navy and commenced active duty on 20 July 1999. Your pre-enlistment physical examination, on 12 January 1999, and self-reported medical history noted no neurologic or psychiatric conditions or symptoms. On 26 May 2000, you reported for duty on board the █ in █.

On 10 October 2000, you commenced a period of unauthorized absence (UA) that terminated after 195 days, on 23 April 2001, with your surrender to military authorities. On 15 June 2001, you submitted a voluntary written request for an administrative discharge in lieu of trial by court-martial for your long-term UA. Prior to submitting this voluntary discharge request, you conferred with a qualified military lawyer, at which time you were advised of your rights and warned of the probable adverse consequences of accepting such a discharge. You indicated you consulted with counsel and you expressly admitted that you were guilty of your UA. You acknowledged that if your discharge was under Other Than Honorable (OTH) conditions it may deprive you of virtually all veteran's benefits based upon your current period of active service, and that you may expect to encounter substantial prejudice in civilian life. As a result of this course of action, you were spared the stigma of a court-martial conviction for your UA, as well as the potential sentence of confinement and the negative ramifications of receiving a punitive discharge from a military judge. In the interim, your separation physical examination and self-reported medical history both noted no neurologic or psychiatric conditions or symptoms. Ultimately, on 6 July 2001 you were separated from the Navy with an OTH discharge characterization and assigned an RE-4 reentry code.

The Board carefully considered all potentially mitigating factors to determine whether the interests of justice warranted relief in your case in accordance with the Hagel, Kurta, and Wilkie Memos. These included, but were not limited to: (a) your mental health was unstable due to your father's illness, (b) you wanted to be near him and take care of him so you left your post without authority, (c) now that your life is somewhat in order you would like to correct this mistake you made when you were young, and (d) you are self-employed business owner since 2005. For purposes of clemency consideration, the Board noted you provided a state contractor's license but no supporting documents 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 AO dated 18 May 2022. The Ph.D. stated in pertinent part:

Petitioner's OMPF did not contain evidence of a diagnosis of a mental health condition or reported psychological symptoms/behavioral changes indicative of a diagnosable mental health condition. Petitioner did not provide medical evidence to support his claim of a MHC and his personal statement indicated he was aware of his misconduct. There was no evidence presented Petitioner was not responsible for his behavior. Additional records (e.g., post-service mental health records describing the Petitioner's diagnosis, symptoms, and their specific link to his misconduct) would aid in rendering an alternate opinion.

The Ph.D. concluded, "[b]ased on the available evidence, it is my considered clinical opinion, there is insufficient evidence of a MHC that can be attributed to military service, or that his in-service misconduct could be attributed to a MHC."

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 concurred with the AO and 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 conditions were 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. Moreover, the Board observed that you did not submit any clinical documentation or treatment records to support your mental health claims despite a request from BCNR on 21 March 2022 to specifically provide additional documentary material. 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 clearly reflected that your 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 not be held accountable for your actions.

The Board noted that there is no provision of federal law or in Navy 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 OTH conditions is generally warranted for misconduct and 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. The simple fact remains is that you left the Navy while you were still contractually obligated to serve and you went into a UA status for just over six months (195 days) 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 veterans' benefits, or enhancing educational or employment opportunities. Accordingly, the Board determined that there was no impropriety or inequity in your discharge, and even under the liberal consideration standard, the Board concluded that your serious misconduct clearly merited your receipt of an OTH characterization, and that your separation was in accordance with all Department of the Navy directives and policy at the time of your discharge. Further, while the Board carefully considered your post-discharge good character, however, even in light of the Wilkie Memo and reviewing the record holistically, the Board still concluded that your request does not merit clemency. 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,

7/12/2022

[REDACTED]

Executive Director

Signed by: [REDACTED]