



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

■  
Docket No: 3389-22  
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 22 August 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). As part of the Board's review, a qualified mental health professional reviewed your request and provided the Board with an Advisory Opinion (AO) on 28 June 2022. You were provided an opportunity to respond to the AO but chose not to 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 a period of active duty on 18 January 1989. After a period of service, you reenlisted on 16 October 1992. On 17 January 1996, you commenced a period of unauthorized absence (UA) which ended in your apprehension 302 days later on 13 November 1996. On 6 January 1997, you were found guilty at a special court-martial (SPCM) of the aforementioned UA and sentenced to confinement for 90 days, forfeitures of \$500.00 pay per month for 3 month, to be reduced in rank to E-1, and to be separated with a Bad Conduct Discharge (BCD). On 25 February 1998, you were so discharged.

In 2011, you submitted an application to the Naval Discharge Review Board (NDRB) requesting an upgrade to your discharge. While NDRB found administrative errors on your Certificate of Release or Discharge from Active Duty (DD 214), the NDRB concluded your discharge was proper as issued.

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 desire to be issued a DD 214 capturing your service dates from 18 January 1989 to 15 October 1992 as Honorable (HON) and receive a discharge upgrade. You also requested your reentry code be changed from RE-4 and contend you incurred PTSD and MHC during your military service, adding, (1) “I did not have any disciplinary issues or write-ups prior to this incident and I was not offered any treatment or counseling as an alternative to being discharged,” and (2) “I would have loved to serve my country by continuing my obligated active service and retire but I feel like I wasn’t given any chances, options, or opportunities to do so.” For purposes of clemency consideration, the Board noted you did not provide supporting documentation describing post-service accomplishments or advocacy letters.

Based on your assertion that you incurred PTSD and MHC during military service, a qualified mental health professional reviewed your request and provided the Board with the AO. The AO stated in pertinent part:

Petitioner’s OMPF (official military personnel file) did contain evidence of a diagnosis of an Adjustment Disorder and personality disorder traits. His symptoms were considered resolved upon his discharge in 1991 from the naval hospital. Although the court-martial transcript was not available to the NDRB who noted discrepancies within Petitioner’s contentions. Petitioner did not provide evidence of a post-service diagnosis. There is no evidence he was unaware of his misconduct or 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 AO concluded, “[b]ased on the available evidence, it is my considered clinical opinion, there is insufficient evidence of PTSD or another MHC that can be attributed to military service, or that his in-service misconduct could be attributed to PTSD or another MHC.”

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 SPCM, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct that included a period of UA lasting approximately 10 months. Additionally, the Board considered the likely negative effect your misconduct had on the good order and discipline of the command along with the discrediting nature of your apprehension by civilian authorities. Finally, the Board concurred with the AO that there is insufficient evidence that your misconduct may be attributed to PTSD or another MHC. As a result, the Board concluded your conduct constituted a significant departure from that expected of a Sailor and continues to warrant a BCD characterization. After applying liberal consideration, the Board did not find evidence of an error or injustice that warrants upgrading your characterization of service, changing your reentry code, or granting clemency in your case.

Lastly, the Board noted BUPERSINST 1900.8, which governed your discharge at the time of your separation, states “DD 214 will not be prepared or issued in the case of personnel who are discharged for immediate reenlistment.” It further instructs “CONTINUOUS HONORABLE ACTIVE SERVICE FROM (applicable date) UNTIL (applicable date)” be captured in block 18 of service members DD 214. Since your DD 214 documents your continuous honorable service dates in block 18, the Board concluded it is in compliance with the aforementioned instruction and a separate DD Form 214 is not required or warranted in your case. 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,

9/9/2022

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Executive Director

Signed by: █