



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

█  
Docket No: 3508-22

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 November 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 professional, which was previously provided to you. Although you were afforded an opportunity to submit an AO rebuttal, you 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 U.S. Navy and began a period of active duty on 25 March 1982. On

28 September 1983, you received non-judicial punishment (NJP) for using provoking words which caused a fight between you and another Sailor in the ship's berthing. You were counseled after your NJP, stating in part, you were being retained in the naval service, and any further deficiencies in your performance and or conduct may result in disciplinary action and processing for administrative discharge. Then, on 17 February 1984, you received a second NJP for a one day unauthorized absence (UA). On 7 August 1984, you received a third NJP for sleeping on watch and five specifications of UA totaling 15 days.

Subsequently you were notified for administrative separation for pattern of misconduct. You elected your rights to consult with military counsel and to request an administrative discharge board (ADB) hearing. The ADB found that you had committed the misconduct that formed the basis for your separation and recommended that you be discharged with a General (Under Honorable Conditions) (GEN). Your Commanding Officer (CO) concurred with the Board's recommendation and forwarded it to the Separation Authority (SA). On 31 October 1984, the SA approved your discharge and, the same day, you started another period of UA. Upon your return from UA after 19 days, you again received NJP on 28 November 1984 for the 19 days of UA. Subsequently, you were discharged, on 4 December 1984, with a GEN.

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, your desire to upgrade your discharge character of service and change the separation reason to medical condition(s). You also contend that that you are suffering from PTSD and this was overlooked by the command and the ADB, your mental health has significantly decreased after suffering an assault which left you unconscious with retrograde amnesia, and if the command had taken the time and effort to follow through with recommendations concerning a psych examination after the assault you may have had an opportunity to confront and address your mental health condition and get the help you needed. For purposes of clemency and equity consideration, the Board noted you did not provided supporting documentation describing post-service accomplishments, advocacy letters or medical documents of you being diagnosed with PTSD. They did note, you provided the VA letter stating a service connected disability.

As part of the Board's review, a qualified mental health professional reviewed your request and provided the Board with an AO on 14 July 2022. The AO noted in pertinent part:

There is evidence in the Petitioner's service medical record that he sustained a mild TBI during military service. Although his misconduct does follow his head injury, his statement in service indicated that his formal counseling and behavior difficulties preceded the altercation. Although the VA has granted service connection, the diagnosis or medical issues are not available. The Petitioner's statement is not sufficiently detailed to establish a nexus with his misconduct, given his mild symptoms note in the record with no apparent need for follow-up. There is no evidence he was unaware of his misconduct or not responsible for his behavior. Additional records (e.g., complete VA medical records describing the Petitioner's diagnosis, symptoms, and their specific link to his misconduct) would aid in rendering an alternate opinion.

The AO concluded, “it is my clinical opinion that there is evidence of a TBI that may be attributed to military service. There is insufficient evidence of a diagnosis of PTSD that may be attributed to military service. There is insufficient evidence that his misconduct could be attributed to a TBI or PTSD.”

After thorough review, the Board concluded your potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your four NJP’s, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and concluded your misconduct showed a complete disregard for military authority and regulations. The Board also considered the negative impact your conduct likely had on the good order and discipline of your department. Further, the Board noted you provided no evidence to substantiate your contentions. Additionally, the Board concurred with the AO that there is insufficient evidence of a diagnosis of PTSD, and there is insufficient evidence your misconduct could be attributed to PTSD. As a result, the Board determined significant negative aspects of your active service outweigh the positive aspects and continues to warrant a general characterization. Ultimately, the Board concluded your documented misconduct was sufficient to support your administrative separation and you were appropriately discharged for pattern of misconduct. Based on this conclusion, the Board determined you were not qualified for a disability discharge even if there was evidence of a qualifying disability condition. Finally, even in light of the Wilkie Memo and reviewing the record holistically, the Board did not find evidence of an error or injustice that warrants upgrading your characterization of service, changing your narrative reason for separation, or granting relief as a matter of clemency or equity. Accordingly, given the totality of the circumstances, the Board determined 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,

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Executive Director

Signed by: █