



**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: 4740-22

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 24 October 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. Although you were afforded an opportunity to submit an AO rebuttal, you chose not to do so.

After an initial period of Honorable service from 29 May 1984 to 4 March 1988, you immediately reenlisted in the United States Navy and commenced a second period of active duty on 4 March 1988. On 3 February 1989, you received an Administrative Counseling (Page 13) due to consistent problems carrying out the duties of DAC Operator and your failure to meet your financial obligations. You were relieved as DAC Operator and advised that any further deficiencies in your performance or conduct may result in disciplinary action or administrative separation. On 3 March 1989, you received another Page 13 counseling for your failure to attend a scheduled dental appointment.

Between 2 April 1989 and 13 April 1990 you received six additional Page 13 counseling regarding your failure to meet your financial obligations. On 27 August 1990, Commander, Naval Military Personnel Command issued you a Letter of Substandard Performance. You were advised that your performance was below acceptable standards, that you were being placed on a probationary period, and that failure to improve could result in your involuntary separation.

On 12 November 1990, you were found guilty in civilian court of driving while intoxicated (DWI). Your driver's license was suspended for 12 months and you were subject to fines and court costs. Consequently, on 14 November 1990, you were notified that you were being processed for an administrative discharge by reason of misconduct due to pattern of misconduct for failure to pay just debts, commission of a serious offense, and civil conviction for drunken driving. After consulting with qualified counsel, you elected your right to present your case at an administrative separation board. On 16 November 1990, an administrative board was convened and found by a vote of 3 to 0 that you should be separated from the Navy with a General (Under Honorable Conditions) (GEN) characterization of service. The separation authority concurred with the board and you were discharged from the service, on 1 February 1991, by reason of "Misconduct-Pattern of Misconduct" with GEN characterization of service and an "RE-4" reenlistment code.

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 for a discharge upgrade and contentions that: (a) your wife incurred a great deal of debt while you were stationed overseas, (b) you struggled with your marriage and its impact on your performance of duty, and (c) you suffered from a mental health condition and depression at the time of misconduct. For purposes of clemency consideration, the Board noted you did not provide supporting documentation describing post-service accomplishments, medical documentation, or advocacy letters.

As part of the Board's review process, a qualified mental health professional reviewed your contentions and the available records and issued an AO dated 24 August 2022. The AO noted in pertinent part:

There is no evidence that he was diagnosed with a mental health condition in military service, or that he exhibited any psychological symptoms or behavioral changes indicative of a diagnosable mental health condition. He has provided no medical evidence in support of his claims. Although it appears he was experiencing significant personal stressors during military service, there is no evidence he was unaware of his misconduct or not responsible for his behavior. Unfortunately, his personal statement is not sufficiently detailed to establish clinical symptoms or provide a nexus with his misconduct. 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, “it is my considered clinical opinion there is insufficient evidence of a mental health condition that may be attributed to military service. There is insufficient evidence that is misconduct may be attributed to a mental health condition.”

Based upon this review, the Board concluded your potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your eight counseling warnings and civilian conviction for DWI, outweighed these mitigating factors. In making this finding, the Board considered the likely negative impact your conduct had on the good order and discipline of your command, as well as the danger you posed to society when driving while intoxicated. The Board determined that your command did everything in their power to assist you in getting your finances under control and that your continued inability to take responsibility for your obligations was contrary to the Navy core values and policy. Further, the Board concurred with the AO that there is insufficient evidence of a mental health condition that may be attributed to your military service or that your misconduct may be attributed to a mental health condition. The Board noted there is no record that you raised mental health concerns during your administrative separation board. Finally, 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. As a result, the Board determined significant negative aspects of your active service outweighs the positive aspects and continue to warrant a GEN characterization. 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 or granting clemency in the form of an upgraded characterization of service. 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,

11/1/2022

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Executive Director

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