



**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: 5251-22  
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 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 2 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)/mental health condition (MHC) (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 an advisory opinion (AO) from a qualified mental health professional, dated 7 September 2022, and your response to the AO.

You entered active duty with the Navy on 10 September 1982. During the period from 10 August 1983 and 27 September 1983, you received two non-judicial punishments (NJP) for drunk on duty and disobeying a commissioned officer. On 3 November 1983, civil authorities convicted you of carrying a concealed weapon. On 25 November 1983, you went into an unauthorized absence (UA) status for one day. On 12 March 1984, you again went into a UA status for 16 days. On 2 May 1984, a summary court-martial (SCM) convicted you of disobeying a lawful order and assault. On 30 September 1984, you received NJP for assault on a commissioned officer and drunk and disorderly conduct. On 18 October 1984, a SCM convicted you of wrongful use of hashish.

On 21 December 1984, you received an additional NJP for absence from appointed place of duty and incapacitated for the performance of duty. Subsequently, you were notified of pending administrative separation action by reason of misconduct due to a pattern of misconduct/frequent involvement with military authorities. After waiving your rights, your commanding officer (CO) forwarded your package to the separation authority (SA) recommending your discharge by reason of misconduct due to a pattern of misconduct/frequent involvement with military authorities with an Other Than Honorable (OTH) characterization of service. The SA approved the CO's recommendation and, on 15 March 1985, you were so discharged.

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 and contention that you were suffering from an undiagnosed bipolar disorder during military service. For purposes of clemency and equity consideration, the Board noted you did not provide supporting documentation describing post-service accomplishments or advocacy letters.

As part of the Board's review, a qualified mental health professional reviewed your request and provided the Board with an AO on 7 September 2022. The AO stated in pertinent part:

There is no evidence that Petitioner 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. Throughout his disciplinary processing, there were no concerns raised of a mental health condition that would have warranted a referral for evaluation. He has provided no medical evidence in support of his claims. 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 his misconduct could be attributed to a mental health condition."

In response to the AO, you provided written statements providing additional information regarding your case and documentation from the ██████████ Department of Corrections.

After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined your misconduct as evidenced by your NJPs, SCMs, and civil conviction, outweighed the potential mitigating factors. In making this finding, the Board considered the seriousness and frequency of your misconduct and concluded that your conduct showed a complete disregard for military authority and regulations. Further, the Board considered the likely negative impact your conduct had on the good order and discipline of your command. In addition, even after considering your rebuttal evidence, the Board concurred with the AO that there is insufficient evidence that your misconduct could be attributed to a MHC. Additionally, the Board noted that there is no medical evidence in your record, and you submitted none, to support your contention that you were suffering from an undiagnosed bipolar disorder during military service. Regardless, even if there was evidence of a mental health condition, the

Board determined that your misconduct was too substantial to be mitigated by a mental health condition. The Board found no evidence that your conduct wasn't intentional or that you were not mentally responsible for your actions. 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 of service. 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 an upgraded characterization of service 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,

11/21/2022

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Executive Director  
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