



**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: 6211-22  
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 12 December 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 an advisory opinion (AO) furnished by qualified mental health provider and your response to the AO.

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.

On 17 May 1982, upon the completion of medical school, you were commissioned as a Lieutenant in the U.S. Navy. On 1 August 1992, you were promoted to the rank of Commander (O-5).

In November 1992, charges were preferred against you to include assault, larceny, kidnapping, communicating a threat (three specifications), and adultery. All of the charges originated from an extra-marital relationship you were having with a female civilian staff member at Naval Hospital ██████████ that lasted over one year.

On 22 February 1993, you submitted a voluntary written request to resign your commission in lieu of a court-martial. In your request, you stated the basis of your request stemmed from the misconduct contained in the court-martial charges preferred against you in November 1992. You stated you understood the elements of the offenses for which you were charged and elected to resign and be administratively discharged rather than be tried by court-martial. You acknowledged if your request was approved, an under Other Than Honorable (OTH) conditions discharge characterization was authorized. Prior to submitting this voluntary resignation/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 were entirely satisfied with the advice you received from counsel. For purposes of this resignation request, you expressly admitted that you were guilty only of the adultery charge. As a result of this course of action, you were spared the stigma of a court-martial conviction for your adultery, as well as the potential sentence of confinement and the negative ramifications of receiving a dismissal from a military judge. Ultimately, on 28 June 1993, you were separated from the Navy for misconduct with an OTH discharge characterization.

On 29 May 1996, the Naval Discharge Review Board (NDRB) upgraded your discharge characterization to General (Under Honorable Conditions) (GEN). The NDRB determined that including charges dismissed by the Convening Authority for consideration by the Secretary of the Navy in your discharge characterization prejudiced your discharge. The NDRB also determined that you submitted sufficient post-service conduct supporting documentation warranting partial clemency.

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 a change to your narrative reason for separation to disability. You contend that: (a) mental health symptoms contributed to your poor judgment, (b) post-service conduct to the ██████████, ██████████ church community and medical community before and during COVID-19 mitigates your conduct, and (c) your separation a medical evaluation was never accomplished. For purposes of clemency and equity consideration, the Board noted you provided supporting documentation describing post-service accomplishments and 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 19 October 2022. The Ph.D. stated 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. Post-service, he has provided evidence of diagnoses of PTSD and other mental health concerns that are temporally remote to his military service and attributed to his military service. Unfortunately, available records are not sufficiently detailed to provide a nexus with his misconduct, as there are discrepancies regarding timelines for his purported trauma. It is also difficult to consider how an extramarital affair is a symptom of a mental health condition.

The Ph.D. concluded, “it is my considered clinical opinion that there is post-service evidence of diagnoses of PTSD and other mental health conditions that may be attributed to military service. There is insufficient evidence his misconduct could be attributed to PTSD or another mental health condition.”

In response to the AO, you provided rebuttal evidence from your legal counsel pointing out errors in the AO and a personal statement that supplied additional clarification of the circumstances of your case.

After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. 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 concluded that there was no convincing evidence of any nexus between any mental health conditions and/or related symptoms and your misconduct, and determined that there was insufficient evidence to support the argument that any such mental health conditions 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 conditions or symptoms. Moreover, 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 reflected that your misconduct was intentional and willful 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 determined that your discharge from the Navy, originally with an OTH, was warranted and legally and factually sufficient. The Board determined that your substantiated misconduct clearly demonstrated you had minimal potential to contribute positively to the Navy

as both a Medical Officer, and as an officer responsible for the care and well-being of enlisted Sailors. Despite the NDRB's 1996 decision to upgrade your characterization of service, the Board found your original OTH discharge to be appropriate under the totality of the circumstances. Therefore, the Board was unwilling to upgrade your discharge a second time to anything higher than your current GEN characterization of service.

The Board noted that there is no provision of federal law or in Navy/Marine Corps 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 and/or to make any conforming changes to your DD Form 214. The Board concluded that significant negative aspects of your conduct and/or performance greatly outweighed any positive aspects of your military record. The Board determined that characterization under OTH or GEN conditions is appropriate when the basis for separation is the commission of an act or acts constituting a significant departure from the conduct expected of an officer. Moreover, 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, employment, or military enlistment opportunities. Finally, the Board determined that you already received a large measure of clemency when the Navy agreed to administratively separate you in lieu of trial by court-martial; thereby sparing you the stigma of a court-martial conviction and possible dismissal. As a result, 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 discharge with a less than fully honorable characterization of service.

Based on the Board's finding that your discharge and original characterization was supported by the evidence, the Board also concluded that your narrative reason for separation remains appropriate. The Board determined that, even if there was evidence that an unfitting disability condition existed at the time of your discharge, you were not eligible for disability processing based on your misconduct based separation from the Navy that resulted in an OTH characterization of service. Consequently, the Board was not persuaded by your arguments regarding the lack of a separation physical<sup>1</sup>. Therefore, while the Board commends your post-discharge accomplishments and good character, 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 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

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<sup>1</sup> The Board noted that a separation physical, dated 22 June 1993, appears in your record. As part of the physical, it appears that you completed a "Report of Medical History" in which you reported that you were in "Excellent Health" with no history of mental health issues.



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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,

12/27/2022



Executive Director

Signed by: 