



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

█  
Docket No: 6379-22

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). The Board also considered the advisory opinion (AO) furnished by a qualified mental health professional and your response to the AO.

You enlisted in the Navy and began a period of active duty on 22 July 1992. On 2 June 1993, you were found guilty at Summary Court Martial (SCM) of violating Uniform Code of Military Justice (UCMJ) Article 121 (Larceny), for stealing an American Express money order from a fellow shipmate and cashing it.

On 28 June 1996, you began a period of unauthorized absence (UA) from your command and remained absent until 21 July 1997, when you were apprehended by civilian authorities in █. Upon your return to military control, you were given a separation physical wherein you reported to be “in good health” and did not disclose any mental health concerns.

Based on the information contained on your Certificate of Release or Discharge from Active Duty (DD Form 214), it appears that you submitted a voluntary written request for an Other Than Honorable (OTH) discharge for separation in lieu of trial by court-martial. In the absence of evidence to contrary, it is presumed that prior to submitting this voluntary discharge request, you would have conferred with a qualified military lawyer, been advised of your rights, and warned of the probable adverse consequences of accepting such a discharge. As part of this discharge request, you would have acknowledged that your characterization of service upon discharge would be an OTH. On 29 August 1997, in accordance with MILPERSMAN 3630650, you were discharged in lieu of trial by court martial with an OTH 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: (a) your desire to upgrade your discharge character of service, (b) your contention that you were suffering from various stressors during your service, such as an unsuccessful rescue effort, the termination of your marriage, and your relationship with your son, and (c) the impact of undiagnosed mental health issues on your conduct. For purposes of clemency consideration, the Board noted that you provided character letters and post-service medical treatment records.

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 21 October 2022. The AO noted in pertinent part:

The Petitioner submitted character letters from his mother, father and aunt. Unfortunately none of these are sufficiently detailed to establish clinical symptoms or provide a nexus with his misconduct. 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 claim. 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 evidence of limited treatment from █ on sessions dating 26 September 2022 and 12 October 2022 for "Generalized Anxiety Disorder." In one treatment record, you described experiencing flashbacks from an incident in service whereby you were "drunk and not able to save an individual who fell between the pier and a barge." In another chart note, you reported you "witnessed some [sic] getting killed when he was in service."

On 1 November 2022, the AO was revised after reviewing the provided evidence of treatment for Generalized Anxiety Disorder. The AO again highlighted that there is no evidence of a diagnosis of PTSD or a trauma-related mental health condition. The revised AO stated as follows:

I have reviewed Petitioner's additional documents. Original Advisory Opinion revised as follows: it is my considered clinical opinion that there is post-service evidence of a mental health condition that may be attributed to military service. There is insufficient evidence his misconduct could be attributed to a mental health condition.

You were provided a copy of this revised AO on 4 November 2022 and did not submit additional matters in rebuttal.

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 SCM conviction and your 13-month period of UA, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your repeated misconduct and its impact on the mission. The Board highlighted that you were granted discharge in lieu of trial, thereby avoiding a possible court martial conviction and/or punitive discharge. The separation authority granted you clemency by accepting your separation in lieu of trial by court martial. Further, the Board concurred with the AO that although there is post-service evidence of a mental health condition that may be attributed to military service, there is insufficient evidence that there is a nexus between your misconduct and the mental health condition. There is no evidence of an in-service mental health diagnosis, and to the contrary, you reported being in "good health" on your separation physical. The medical evidence that you provided in support of your petition is temporally remote to your service and is not sufficiently detailed to provide a nexus between the diagnosis and your misconduct. The Board found that your active duty misconduct was intentional and willful, that you were mentally responsible for your conduct, and that therefore you were rightfully held accountable for your actions. As a result, the Board determined your conduct constituted a significant departure from that expected of a Sailor and continues to warrant an OTH characterization.

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. While the Board commends your post-discharge 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 or granting an upgraded characterization of service 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 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,

12/28/2022

[REDACTED]