



**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: 6385-22

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 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. 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 Navy and began a period of active duty on 3 January 2001. On 22 November 2005, you pleaded guilty at Special Court Martial (SPCM) of violating Uniform Code of Military Justice (UCMJ) Article 107 (False Official Statement) and Article 121 (Larceny), for falsifying

the address of your dependents in order to acquire a higher Basic Allowance for Housing (BAH) entitlement. You were sentenced to 9 months confinement, forfeitures of pay, reduction in rank to E-1, and a Bad Conduct Discharge (BCD). On 19 June 2006, the Convening Authority's action allowed only so much of the sentence as provided for the reduction in rank and forfeitures of pay to be executed as ordered; confinement in excess of 8 months was suspended for 12 months unless sooner vacated. The CA granted clemency by setting aside the punitive discharge in favor of administrative separation.

On 27 June 2006, you were notified that you were being processed for administrative separation (ADSEP) for misconduct, commission of a serious offense. You waived your right to consult with qualified counsel and your right to present your case at an ADSEP Board. On 12 July 2006, you were separated based on misconduct, commission of a serious offense, with an Other than Honorable (OTH) discharge and a RE-4 reentry 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 coerced into committing misconduct by your wife, and (c) your assertion that you suffered from undiagnosed mental health issues and PTSD during your service which had a negative impact on your conduct. For purposes of clemency and equity consideration, the Board noted that you provided portions of your service record.

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 contends that his wife coerced him into using a false address and that he suffered from PTSD and mental health issues during service. 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. 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."

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 SPCM conviction, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and its impact to good order and discipline. The Board highlighted that you were already granted clemency by the CA when post-trial action set

aside the BCD in favor of administrative processing. As such, you received an administrative discharge vice a punitive discharge. Further, the Board concurred with the AO that there is insufficient evidence of a mental health condition that may be attributed to military service or that your misconduct could be attributed to a mental health condition. There is no evidence of an in-service or post-service mental health diagnosis, nor did you raise any mental health concerns throughout the course of your disciplinary or administrative processing. 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. Therefore, 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

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