



**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. 6458-22  
Ref: Signature Date



Dear █:

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 25 January 2023. 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, 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, which was previously provided to you. Although you were afforded an opportunity to submit an AO rebuttal, you chose not to do so.

You enlisted in the Navy and began a period of active duty on 11 September 1989. On 17 July 1991, you received non-judicial punishment (NJP) for two specifications of unauthorized absence (UA) in violation of Article 86, Uniform Code of Military Justice (UCMJ), a violation of a lawful order in violation of Article 92, UCMJ, and larceny in violation of Article 121, UCMJ. On 18 August 1994, you were convicted by a special court-martial (SPCM) of assault in violation of Article 128, UCMJ, and three specifications of a general article in violation of Article 134, UCMJ. As punishment, you were sentenced to confinement, forfeiture of pay, and

restriction. On 11 October 1994, at the completion of your required active service, you were discharged from active duty, you were issued a Certificate of Release or Discharge from Active Duty (DD Form 214) that annotated your characterization of service as General (Under Honorable Conditions). Your final conduct average was 2.8.

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 change your discharge character of service and contentions that a “Chief” that stated he did not trust you and he was strictly a project manager that was never around the work site. 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 30 November 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. 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) may 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 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 NJP and SPCM conviction, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct, and concluded it showed a complete disregard for military authority and regulations. Further, the Board noted that your conduct scores were insufficient to qualify for a fully Honorable characterization of service. At the time of service, a conduct mark average of 3.0 was required to be considered for a fully Honorable characterization of service; a minimum mark you failed to achieve due to your extensive record of misconduct. Additionally, the Board concurred with the AO that there is insufficient evidence of a mental health condition that may be attributed to military service, and there is insufficient evidence your misconduct could be attributed to a mental health condition. As the AO noted, your personal statement is not sufficiently detailed to establish clinical symptoms or provide a nexus with your misconduct. The Board concluded you were responsible for your misconduct that formed the basis for your General (Under Honorable Conditions) characterization of service. The Board also noted, despite your record of misconduct, you were given multiple opportunities

to correct your behavior and allowed to continue to the end of your obligated service rather than face administrative separation with the potential for an Other Than Honorable discharge. Therefore, the Board determined you already received a large measure of clemency. As a result, the Board determined significant negative aspects of your active service outweighed the positive aspects and continues to warrant a General (Under Honorable Conditions) 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 granting you the relief you requested or granting relief 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,

2/6/2023

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Executive Director

Signed by: █