



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

■  
Docket No. 6751-22  
Ref: Signature Date

Dear ■

This is in reference to your reconsideration request 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 8 January 2024. The names and votes of the members of the panel 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 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). In addition, the Board considered the 31 October 2023 Medical Doctor's Advisory Opinion (MD AO), the 7 December 2023 Advisory Opinion from a Licensed Clinical Psychologist (LCP AO), and your response to the AOs.

A review of your record shows that you enlisted in the Navy and entered active duty on 6 December 1988. On 14 August 1990, you received a civil conviction for driving under the influence. On 21 October 1990, you started a period of unauthorized absence (UA) that ended on 28 December 1990. After you reported back to your command, you were referred for a psychiatric evaluation and diagnosed with suicide gesture and alcohol dependence. However, your psychiatric distress was deemed resolved and you were returned to full duty status.

On 9 January 1991, you were convicted at a summary court martial (SCM) for the aforementioned UA period and sentenced to 30 days confinement, forfeiture of pay, and reduction in rate. You were released from confinement after 25 days and given 5 days credit for good behavior. On 19 February 1991, you were notified of the initiation of administrative separation processing by reason of misconduct due to the commission of a serious offense, at which point, you waived your right to counsel and your procedural rights. Subsequently, you went UA on 27 February 1991 and remained in an UA status until your return on 19 March 1992. In the meantime, on 16 April 1991, the discharge authority approved and directed that you be discharged with an Other Than Honorable (OTH) characterization of service. Upon your return from UA, you were given a confinement physical that noted a previously diagnosed Left Rotator Cuff Tear. You did not endorse any other medical or mental health symptoms and you were assessed as Fit for confinement. Ultimately, on 2 June 1992, you were discharged based on your previously approved OTH.

For your petition you contend that the Navy erred by administratively discharging you with an OTH characterization of service for misconduct as there was significant evidence that your misconduct was due to a mental health condition. You request a medical retirement or in the alternative an upgrade to your characterization of service to Honorable or General (Under Honorable Conditions).

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 or disability retirement and contentions that you deserve a medical discharge because you suffered from conditions while in-service that resulted in your misconduct. For purposes of clemency and equity consideration, the Board noted you provided documentation describing your childhood trauma, information regarding your traumatic experiences while in the Navy, your post-service accomplishments, advocacy letters, and your Department of Veterans Affairs (VA) medical records.

In keeping with the letter and spirit of the Kurta Memo, 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, to include whether they qualified you for the military disability benefits you seek. Based on your assertion on your DD Form 149 of Post Traumatic Stress Disorder (PTSD), other mental health issues, and harassment, a qualified mental health professional and a medical doctor reviewed your request for correction to your record and each provided the Board with an AO.

The MD AO stated in pertinent part:

After review of all available objective clinical and non-clinical evidence, in my medical opinion, at the time of discharge from military service, Petitioner did not suffer from any medical or mental health conditions that prevented him from reasonably performing the duties of his office, grade, rank, MOS, or rating. His medical status did not represent an obvious medical risk to the health of the member or to the health or safety of other members, nor did his medical status impose

unreasonable requirements on the military to maintain or protect the Service member.

The MD AO concluded, “[in] summary, in my medical opinion, the preponderance of objective clinical evidence provides insufficient support for Petitioner’s contention that at the time of his discharge he was unfit for continued military service and should have been medically retired. There is post-discharge evidence, temporally remote from Petitioner’s military service, from the VA and civilian providers of diagnoses of Major Depressive Disorder, Alcohol Use Disorder, and PTSD that may be attributed to military service.”

The LCP AO stated in pertinent part:

There is insufficient evidence to attribute a diagnosis of PTSD to military service, given his conflicting statements. For example, his traumatic precipitant of being in a ship battle appears to have occurred when he was UA. Furthermore, it is difficult to consider how PTSD or another mental health condition would account for his extended UA.

The LCP AO concluded, “it is my clinical opinion there is insufficient evidence of a diagnosis of PTSD that may be attributed to military service. There is post-service evidence from VA and other civilian mental health providers of other mental health conditions that may be attributed to military service. There is insufficient evidence to attribute his misconduct to PTSD or another mental health condition, other than alcohol use disorder.”

In response to the AOs, you submitted rebuttal evidence arguing against the AO findings. After a review of your rebuttal evidence, the AO remained unchanged based on the lack of new medical evidence.

After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your SCM and extended period of UA from February 1991 to March 1992, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and found that your conduct showed a complete disregard for military authority and regulations. Further, the Board concurred with the AOs that there was insufficient evidence to conclude that your misconduct was due to a mental health condition. The Board was not persuaded by your rebuttal arguments and agreed with the AOs that your post-discharge medical evidence is temporally remote to your active duty service. As a result, the Board concluded your conduct constituted a significant departure from that expected of a service member and continues to warrant an OTH characterization. Ultimately, the Board concluded the mitigation evidence you provided was insufficient to outweigh the seriousness of your misconduct.

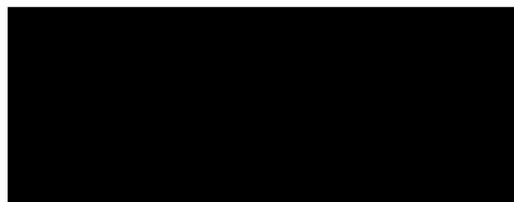
Regarding your request for military disability retirement benefits, the Board also determined relief was not warranted. First, based on its finding that your OTH discharge remains appropriate, the Board determined you are ineligible for military disability retirement benefits. Second, regardless of your misconduct, the Board found insufficient evidence of unfitness to support granting you a disability retirement. During your active duty service you had positive

performance evaluations with a final performance average of 3.5, which reflected an ability to perform the duties commensurate with your grade or rate. In addition, the Board found that your medical evaluations did not document ongoing mental health symptoms or conditions other than your substance abuse. The Board noted that you were evaluated numerous times, to include two brig physical examinations and a separation physical examination as well as by your command's medical department. In all of these evaluations, you did not report any symptoms of a diagnosable depressive or psychotic disorder that would have rendered you unfit for duty. Finally, the Board noted that the majority of your evidence of a mental health condition is post-discharge, temporally remote from your military service. This evidence shows that you have a mental health diagnosis now, but does not provide compelling evidence of unfitness for duty at the time of discharge from the Navy. As a result, the Board concurred with the MD AO that the preponderance of objective clinical evidence provides insufficient support for your contention that, at the time of your discharge, you were unfit for continued military service and should have been medically retired. Therefore, while the Board carefully considered the evidence you submitted in mitigation, even in light of the Kurta, Hagel, and Wilkie Memos and reviewing the record liberally and 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 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,

1/16/2024

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