



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

██████████  
Docket No. 7310-22  
Ref: Signature Date

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████████████████████

Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to Title 10, United States Code, Section 1552. 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 Board waived the statute of limitation 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 13 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 the 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) of a qualified mental health provider, which was previously provided to you. Although you were afforded an opportunity to submit a rebuttal, you chose not to do so.

The Board determined that your personal appearance, with or without counsel, would not materially add to the understanding of the issues involved. Therefore, the Board determined a personal appearance was not necessary and considered your case based on evidence of record.

You enlisted in the Navy and began a period of active duty on 13 November 2003. You subsequently deployed in support of Operation ██████████, receiving a Humanitarian Service Medal, for the period from 28 December 2004 through 12 February 2005. You were transferred to the Transient Personnel Unit (TPU) on 4 January 2006 pending disciplinary action. Your Official Military Personnel File (OMPF) contains two copies of your nonjudicial punishment (NJP), which was held on 26 January 2006, for an offense which

occurred on or about 1 September 2004 prior to your operational deployment. Both copies of the NJP reflect an offense of a false official statement under Article 107 of the Uniform Code of Military Justice. The second version includes an additional offense of unlawful carnal knowledge under Article 120. As a result of your misconduct, you were notified of administrative separation procedures for misconduct due to commission of a serious offense with the least favorable characterization of service as General (Under Honorable Conditions) (GEN). The Commanding Officer, Navy Region South West TPU, recommended your separation with a GEN only on the basis of the specified serious offense of Article 107. You were so discharged on 23 February 2006.

You previously applied to the Naval Discharge Review Board (NDRB). On 22 November 2011, the NDRB denied your request after determining your discharge was proper as issued.

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 upgrade your discharge and change your narrative reason for separation, as well as your contentions that you request liberal consideration of your misconduct due to your post-service diagnosis of service-connected PTSD. For purposes of clemency and equity consideration, the Board noted you provided Department of Veterans Affairs documents but no supporting documentation describing post-service accomplishments or advocacy letters.

Because you also contend that PTSD affected the circumstances of your discharge, the Board also considered the AO. The AO 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. Throughout his disciplinary processing, there were no concerns raised of a mental health condition that would have warranted a referral for evaluation. Post-service, the VA has granted service connection for PTSD. Unfortunately, available records are not sufficiently detailed to establish a nexus with his misconduct, as it is unclear how his misconduct could be attributed to unrecognized symptoms of PTSD. 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 post-service evidence of PTSD that may be attributed to military service. There is insufficient evidence his misconduct could be attributed to PTSD."

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 NJP, 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 AO that there is insufficient evidence your misconduct could be attributed to PTSD. The Board additionally noted that applicable guidance regarding liberal consideration advises that premediated

