



**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. 7345-22

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 limitations 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, 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)/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). The Board also considered an advisory opinion (AO) from a qualified mental health professional dated 28 November 2022. Although you were provided an opportunity to comment on the AO, 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 entered active duty with the Navy on 1 December 1982. On 25 June 1985, you received a medical evaluation and was diagnosed with a Mixed Personality Disorder that existed prior to enlistment. As a result, you were recommended for administrative separation. On 3 July 1985, you received non-judicial punishment (NJP) for unauthorized absence (UA) totaling 72 days. Subsequently, you were notified of pending administrative separation action by reason of misconduct due to commission of a serious offence. You elected to consult with legal counsel and subsequently requested an administrative discharge board (ADB). The ADB found that you committed misconduct due to commission of a serious offence and recommended you be separated with a General (Under Honorable Condition) (GEN) characterization of service. The separation authority (SA) concurred with the ADB and directed your discharge. On 26 September 1985, you were so discharged.

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 contentions that you incurred a mental health concerns during military service, which might have mitigated your discharge character of service. 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 28 November 2022. The mental health professional stated in pertinent part:

Petitioner was appropriately referred for psychological evaluation during his enlistment and properly evaluated on two occasions. Initially, his behavior was considered a grief reaction. However, his personality disorder diagnosis was based on observed behaviors and performance during his period of service, the information he chose to disclose, and the psychological evaluation performed by the mental health clinician over a period of close observation during a week of hospitalization. A personality disorder diagnosis is pre-existing to military service by definition, and indicates lifelong characterological traits unsuitable for military service. Unfortunately, he has provided no medical evidence of another mental health condition. His in-service misconduct appears to be consistent with his diagnosed personality disorder, rather than evidence of another mental health condition incurred in or exacerbated by military service. 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 other than a personality disorder. There is insufficient evidence his misconduct could be attributed to a mental health condition other than his diagnosed personality disorder."

After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined your misconduct, as evidenced by your NJP, outweighed the potential 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 concurred with the AO that there is insufficient evidence your misconduct could be attributed a mental health condition. Additionally, the Board also noted that there is no evidence in your record, and you submitted none, to support your contentions. Finally, the Board determined, based on your misconduct, you were fortunate to receive a GEN characterization rather than an Other Than Honorable characterization. The Board noted your length of time in a UA status qualified for a punitive discharge under the Uniform Code of Military Justice. As a result, the Board concluded significant negative aspects of your active service outweighed the positive and continues to warrant a GEN characterization of service. 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,

2/3/2023

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Executive Director

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