



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

[REDACTED]  
Docket No. 7824-22  
Ref: Signature Date

[REDACTED]

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 10 February 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 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) (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 to the AO, you chose not to do so.

You enlisted in the Navy and began a period of active duty on 4 March 1987. Shortly thereafter, you received nonjudicial punishment (NJP) for a violation of Article 92 due to failure to obey a written order. You served almost a year without further incident, but were informally counseled, on 16 May 1988, for substandard performance and behavior. You were again formally counseled several weeks later, with warnings regarding the potential for administrative separation under adverse circumstances, due to negligent behavior in performing your assigned duties.

You were again counseled, on 25 August 1988, and assigned extra military instruction requiring you to write an essay on controlling your verbal outbursts.

Several months later, on 2 December 1988, you received a second NJP for a violation of Article 134 due to obtaining services under false pretenses. Finally, after your third NJP for violations of Article 92 and Article 91 for failure to obey an order or regulation and insubordinate conduct, respectively, you were notified of processing for administrative separation by reason of misconduct due to a pattern of misconduct. You elected to waive your right to a hearing before an administrative separation board or to submit a statement for consideration. The message recommending your separation under Other Than Honorable (OTH) conditions described you as having an uncontrollable mouth, immature personality, being undisciplined, being a frequent source of conflict, and having a propensity for argument. Your separation was approved, and you were discharged with OTH on 31 May 1989.

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 your contentions that the circumstances of your discharge were affected by the injustice of a condition under the policies of Don't Ask, Don't Tell (DADT). For purposes of clemency and equity consideration, the Board considered the evidence you submitted in support of your application.

Because you contend that a mental health (MH) condition affected 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. He has provided no evidence of treatment for a mental health condition that is temporally remote to his military service and appears unrelated. Unfortunately, available records are not sufficiently detailed to establish clinical symptoms in military service 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 these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your NJPs, 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. In addition, the Board concurred with the AO regarding the lack of evidence supporting your contended MH conditions and also noted that you did not provide any background or context to clarify how your contended "DADT condition" might have affected your misconduct or resulting discharge. Likewise, the Board observed that you have not

submitted any evidence of post-discharge character for consideration of clemency. 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. While the Board carefully considered the evidence you submitted in mitigation, 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. Ultimately, the Board concluded the mitigation evidence you provided was insufficient to outweigh the seriousness of your misconduct. 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 the 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 is attached 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,

2/28/2023

[REDACTED]  
Executive Director  
Signed by: [REDACTED]