



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

█  
Docket No. 7851-22  
Ref: Signature Date

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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 18 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) (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 U.S. Navy and began a period of active duty on 18 April 2007. While in basic training, you received non-judicial punishment (NJP) on 13 June 2007 for dereliction of duty and were issued a counseling warning for your performance and conduct. You subsequently began a period of unauthorized absence (UA) on 25 June 2007 that ended with your apprehension on 24 October 2007. On 26 September 2007, you received your second NJP for the 121 days UA.

Unfortunately, the documents pertinent to your administrative separation are not in your official military personnel file (OMPF). Notwithstanding, the Board relies on a presumption of regularity to support the official actions of public officers and, in the absence of substantial evidence to the contrary, will presume that they have properly discharged their official duties. Your Certificate of Release or Discharge from Active Duty (DD Form 214), reveals that you were separated from the Navy on 21 November 2007 with an Uncharacterized Entry Level Separation characterization of service, your narrative reason for separation is "Misconduct - AWOL," your separation code is "JKD," and your reenlistment code is "RE-4." Your separation code indicates you were separated for misconduct, commission of a serious offense.

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 was not limited, your request to upgrade your characterization of service and contention that you were suffering from PTSD and didn't know it. For purposes of clemency and equity consideration, the Board considered your medical documentation but 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 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 not concerns raised of a mental health condition that would have warranted a referral for evaluation. He has provided post-service evidence of diagnoses of mental health conditions that are temporally remoted to his military service and appear unrelated. Unfortunately, available records are 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 that there is insufficient evidence of a diagnosis of PTSD or another mental health condition that may be attributed to military service. There is insufficient evidence his misconduct could be attributed to PTSD or another mental health condition."

After thorough review, the Board concluded that your potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by NJP and long-term UA, 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. Additionally, the Board concurred with the AO and determined that there is insufficient evidence of a diagnosis of PTSD that may be attributed to military service, and there is insufficient evidence your misconduct could be attributed to PTSD. Finally, the Board determined that you were appropriately assigned

an uncharacterized entry-level separation since you were processed for separation in your first 180 days of active duty service. While there are exceptions to policy that allow for the assignment of a characterized discharge within a member's first 180 days, the Board found none of those exceptions applied in your case. In fact, the Board found that you were fortunate to receive an uncharacterized entry-level separation for misconduct that normally merits an Other Than Honorable characterization. As a result, the Board determined you already received a large measure of clemency from the Navy. Therefore, 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 upgrading your characterization of service or granting an upgraded characterization of service 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,

1/31/2023

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Executive Director  
Signed by: █