



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

█  
Docket No. 7860-22  
Ref: Signature Date

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Dear █:

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 8 September 2000. You were issued 20 hours of extra military instruction, in January 2001, to hold you accountable for your actions so that you would take responsibility to get to work on time. Subsequently, you had a period of unauthorized absence (UA) from 31 May 2001 until 4 June 2001. Although you were not punished for your UA, you did receive nonjudicial punishment (NJP), in October 2001, for violations of Uniform Code of Military Justice (UCMJ) under Article 91 for insubordinate conduct toward a petty officer by disrespectful language and Article 92 for failure to obey an

order to get up off the deck to participate in work. As a result, you were administratively counseled that you were being retained but that future deficiencies could result in administrative separation under adverse conditions. The following year, on 3 October 2001, you received your second NJP for another violation of Article 91, again for insubordinate conduct toward a petty officer due to disrespectful language. Your third NJP, on 19 May 2003, was again for two specifications of the same Article 91 violation as well as a violation of Article 128 by assaulting a third class petty officer in the face with your fist.

Following your third NJP, you were notified of administrative separation proceedings for misconduct due to commission of a serious offense and for a pattern of misconduct; although you waived your right to a hearing before an administrative separation board, you requested to submit a statement in which you expressed your desire to resolve your deficiencies, learn how to resolve conflicts peacefully, and complete your enlistment. However, while pending processing for your separation, you received a fourth NJP for two additional UA periods. Your commanding officer forwarded a recommendation for separation under Other Than Honorable (OTH) conditions on 31 July 2003. Your separation was approved by Commander, Carrier ██████████ and you were discharged on 15 August 2003 with an OTH.

You previously applied to the Naval Discharge Review Board (NDRB) which, on 2 April 2009, considered your contention that your discharge was due to a fight provoked by a third class petty officer. Ultimately, 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 your contention that your discharge is unjust because you suffered post-traumatic stress disorder during your military service based on your father passing away just before your enlistment. You also apologized for your actions. For purposes of clemency and equity consideration, the Board noted you did not provide supporting documentation describing post-service accomplishments or advocacy letters.

Because you now 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 he was diagnosed with PTSD during military service. 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 medical evidence in support of his claims. Unfortunately, available records are not sufficiently detailed to establish clinical symptoms in service or a nexus with his misconduct. Additional records (e.g., active duty or 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 diagnosis 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 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. Additionally, the Board concurred with the AO regarding the lack of evidence that your misconduct might be attributable to your contended PTSD and noted that you did not submit 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. 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 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

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Executive Director

Signed by: ██