



**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. 8270-22  
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 8 May 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 service 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 and your response to the AO.

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 previously submitted a petition to the Navy Discharge Review Board and were denied relief on 3 February 2011.

You enlisted in the United States Navy and commenced a period of service on 27 June 1988. You had continuous Honorable active service from 27 June 1988 to 24 September 2005. On

2 December 2004, you received a medical evaluation to review your retention for submarine service after being relieved as assistant navigation due to disclosed symptoms of depression, insomnia, decreased appetite, and difficulty concentrating. You were prescribed medication and referred for a follow-up evaluation. You reenlisted on 25 September 2005.

On 8 February 2006, you underwent a routine medical examination during which chart review revealed your diagnosis of MDD (Major Depressive Disorder) from your last physical exam dated December 2004. It was noted that no mental health evaluation follow-up was ever obtained. You reported that your symptoms had resolved completely. On 10 February 2006, you received a mental health review to determine whether you were mentally fit to return to submarine duty. You disclosed feeling symptoms of depressed in December of 2004 and your prescription of Effexor, however, you reported that you did not find the medication helpful and stopped taking the medication after a month and a half. You stated that your recovery was a process of time and denied the presence of any mental health symptoms other than occasional headaches. Aside for reporting some stress associated with returning to the boat, you had a positive attitude and looked forward to returning to submarine duty. On 2 March 2006, you were determined to be fit for submarine duty and your medical hold was removed.

On 20 March 2006, you were arrested by civilian law enforcement for an attempted sex act with a child under the age of 15. Upon confiscation of your electronic devices, additional charges were added for possession of child pornography. You entered into a stipulation of fact in which you admitted to the misconduct. On 5 October 2006, you pled guilty to the charge of “Attempted Sex Act with a Child, Code Section 18.2-26” and “Possession of Child Pornography, Code Section 18.2-374.”

On 13 October 2006, your command initiated administrative separation (ADSEP) procedures by reason of misconduct, Commission of a Serious Offense and Civilian Conviction. You elected your right to representation by qualified military counsel and to present your case at an ADSEP board. On 14 December 2006, the ADSEP Board found that, by a vote of 3 to 0, both bases for separation were met, and recommended separation with a General (Under Honorable Conditions) (GEN) characterization of service. You submitted a letter of deficiency for review to the separation authority (SA), raising arguments including ineffective assistance of counsel and procedural errors that occurred at the board. After review of your arguments, the SA determined that there were no errors in your ADSEP processing and directed your discharge due to your civilian criminal conviction with a GEN characterization of service and an RE- 4 reenlistment code. On 5 April 2007, you were so discharged.

The Board carefully considered all potentially mitigating and/or extenuating 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: (a) your desire to upgrade your characterization of service, be placed in a “retired” status, and receive back pay and entitlements, (b) your contention that you were struggling with mental health issues, and (c) the impact that your mental health issues had on your conduct. The Board also considered your contention that the personnel involved in the handling of your service-connected mental health illness and discharge proceedings either failed or erred in a number of issues. You explain that these issues include: (1) that Naval medical personnel involved in your service-connected mental health illness while still on active duty failed to follow NAVMED P-177, Chapter 15-106, para 2(i); (2)

That your service-connected mental health illness was never taken into consideration as to how it factored into your misconduct; and (3) the discharge processing errors before, during, and after your ADSEP Board hearing. For purposes of clemency and equity consideration, the Board noted that you provided documentation related to your post-service accomplishments and advocacy letters.

In your petition, you contend that you were suffering from mental health concerns during your military service, which contributed to your misconduct and should mitigate your discharge. As part of the Board review process, the BCNR Physician Advisor who is a licensed clinical psychologist (Ph.D.), reviewed your contentions and the available records and issued an AO dated 6 February 2023. The Ph.D. noted in pertinent part:

The Petitioner contends that he was never offered follow-up for diagnosed depression while in service and that his depression contributed to his misconduct. During his fitness for submarine duty evaluation in February 2006, he denied all symptoms of depression and told the evaluating psychologist that he had stopped taking Effexor approximately 6 weeks after being diagnosed with Depression in December 2004. As such, the evaluating psychologist diagnosed him with Major Depressive Disorder in Full Remission and recommended fitness for full duty. It is difficult to know the circumstances of why mental health follow-up did not occur after his initial December 2004 evaluation, however the Petitioner adamantly denied any lingering depressive symptoms in 2006 – one month before his civilian arrest.

The Ph.D. concluded, “it is my considered clinical opinion there is sufficient evidence of a mental health condition that existed during his military service. There is insufficient evidence that his misconduct could be attributed to a mental health condition.”

In response to the AO, you provided additional arguments in support of your application. After reviewing your response, the AO remained unchanged.

After thorough review, the Board concluded the potentially mitigating factors were insufficient to warrant relief. In accordance with the Kurta, Hagel, and Wilkie Memos, the Board gave liberal and special consideration to your record of service, and your contentions about your mental health concerns and the possible adverse impact on your service. Specifically, the Board felt that your misconduct, as evidenced by your civilian felony conviction, outweighed these mitigating factors. The Board considered the seriousness of your misconduct and the fact that it involved attempted sexual abuse of a minor. The Board determined that your misconduct was contrary to the Navy’s core values and policy, and likely had a detrimental impact on mission accomplishment. In making this determination, the Board concurred with the advisory opinion that there was no convincing evidence that you were suffered from a mental health condition at the time of your misconduct, or that any such mental health condition was related to or mitigated the misconduct that formed the basis of your discharge. The Board noted that you adamantly denied any lingering depressive symptoms in 2006, and as such the evaluating psychologist diagnosed you with Major Depressive Disorder in Full Remission and recommended fitness for full duty. You never sought follow up care for mental health issues after your medical examination in 2004 and elected to terminate the use of medication almost immediately after its

