



**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. 8294-22  
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 27 March 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. Although you were afforded an opportunity to submit an AO rebuttal, 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 enlisted in the United States Navy and commenced a period of service on 20 October 1992. On your enlistment application, you acknowledged a pre-service speeding ticket. However, you did not disclose your preservice civilian convictions for misdemeanor theft and aggravated burglary that resulted in three years of probation. Your civilian probation was revoked on

8 November 1991, prior to your enlistment, due to your whereabouts being unknown to state officials. On 29 April 1993, your command was notified there was a civilian felony warrant for the probation violation. On 25 May 1993, your parole was reinstated after your location was verified and reset to expire in February 1994.

In August 1993, you attended Level II treatment for an alcohol use disorder. On 7 September 1993, you began a period of unauthorized absence (UA) and remained so until 2 October 1993, when you were apprehended by civilian authorities on drunk driving charges. On 7 October 1993, you received non-judicial punishment (NJP) for violation of Uniform Code of Military Justice (UCMJ) Article 86, for that period of UA. You did not appeal this NJP. On 18 November 1993, you were convicted by civilian authorities on charges related to your arrest for drunk driving.

On 29 November 1993, your chain of command requested a waiver of your administrative separation due to fraudulent enlistment and the waiver was approved. On 15 December 1993, you underwent a medical evaluation wherein the provider noted that you “demonstrated alcohol abuse with fair to poor rehabilitation potential. Although he has failed level II alcohol rehab and Follow-on care, I do not find enough evidence for a diagnosis of dependence.”

On 21 April 1994, you were found guilty at your second NJP, again for violating UCMJ Article 86, this time for a 10 minute period of UA. You did not appeal this NJP. On 4 May 1994, you were notified that you were being processed for an administrative discharge by reason of misconduct due to commission of a serious offense, alcohol rehabilitation failure, pattern of misconduct, and civilian conviction. You waived your right to consult with qualified counsel and your right to present your case at an administrative separation board.

Prior to your separation, on 5 May 1994, you were found guilty at your third NJP for violating UCMJ Article 86, for UA from your place of duty, and Article 123(a), for writing a fraudulent check. You did not appeal this NJP. On 19 May 1994, you were discharged from the service for misconduct with an Other than Honorable (OTH) characterization of service and assigned an RE-4 reenlistment code.

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, change your evaluations, and have your record administratively corrected, (b) your contention that you were struggling with undiagnosed mental health issues, and (c) the impact of your mental health concerns on your conduct. For purposes of clemency and equity consideration, the Board noted you did not provide documentation related to your post-service accomplishments or character letters.

In your petition, you contend that you were suffering from undiagnosed PTSD, as well as other mental health concerns during military service, which might have mitigated your discharge character of service. You explain that “the discrimination...when the change of command took place...triggered...manic depression.” 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 30 January 2023. The Ph.D. noted in pertinent part:

There is no evidence that he was diagnosed with a mental health condition in military service, or that he exhibited a clear pattern of psychological symptoms or behavioral changes indicative of a diagnosable mental health condition, other than a possible alcohol use disorder. Throughout his disciplinary processing, there were no concerns raised of another 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 provide a nexus with his misconduct, particularly given pre-service behavior. 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 Ph.D. concluded, "it is my clinical opinion 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 these 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. However, the Board felt that your misconduct, as evidenced by your three NJPs and civilian conviction, outweighed these mitigating factors. The Board considered the seriousness of your misconduct and the fact that you went UA for a significant period of time and got arrested from alcohol related misconduct during this period. Further, the Board also considered the likely negative impact your conduct had on the good order and discipline of your command. The Board determined that your misconduct was contrary to Navy core values and policy and likely had a detrimental impact on mission accomplishment. In making this determination, the Board concurred with the AO that there was no convincing evidence that you suffered from any type of mental health condition while on active duty, 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 did not submit any clinical documentation or treatment records to support your mental health claims despite a request from BCNR on 8 November 2022 to provide such medical documentation. As a result, the Board concluded that your misconduct was not due to mental health-related symptoms. The Board found that your active duty misconduct was intentional and willful and demonstrated you were unfit for further service. The Board also determined that the evidence of record did not demonstrate that you were not mentally responsible for your conduct or that you should otherwise not be held accountable for your actions. As a result, the Board determined your conduct constituted a significant departure from that expected of a service member and continues to warrant an OTH characterization.

The Board noted that there is no provision of federal law or in Navy/Marine Corps regulations that allows for a discharge to be automatically upgraded after a specified number of months or years. After applying liberal consideration, the Board did not find evidence of an error or injustice that warrants upgrading your characterization of service or granting clemency in the form of an upgraded 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 that 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,

4/12/2023

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Executive Director

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