



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

Docket No. 8563-22

Ref: Signature Date

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 April 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 provided the opportunity to respond to the AO, you chose not to do so.

You enlisted in the United States Navy and commenced a period of service on 18 July 1950. On 6 January 1951, you were found guilty at Summary Court Martial (SCM) for violating Uniform Code of Military Justice (UCMJ) Article 86, for a seven day period of unauthorized absence (UA) from your command. On 12 May 1951, you received non-judicial punishment (NJP) for violating UCMJ Article 86, for a six hour period of UA. On 19 July 1951, you received your second NJP for violating UCMJ Article 86, for a five hour period of UA. On 3 January 1952, you received your third NJP for violating UCMJ Article 86, for a ten-hour period of UA. On 17 January 1952, you received your fourth NJP for violating UCMJ Article 92, for refusal to carry out extra

instructions prescribed by the master-at-arms. On 5 February 1952, you were found guilty at your second SCM for violating UCMJ Article 86, for a six day period of UA. On 17 May 1952, you received your fifth NJP for violating UCMJ Article 86, for a three day period of UA. On 28 June 1952, you were found guilty at your third SCM for violating UCMJ Article 86, for a two day period of UA. You did not appeal any of these NJPs or SCMs.

On 19 November 1953, you were found guilty at General Court Martial (GCM) for violating UCMJ Article 86, for a 29 day period of UA, Article 85, for a 248 day period of desertion, and Article 92, for failure to obey a lawful order issued by your commanding officer. You were sentenced to five months confinement, forfeitures of pay, reduction in rank to E-1, and a Bad Conduct Discharge (BCD). On 1 February 1954, you waived your right to request restoration to duty and requested execution of the discharge of the GCM without review by the appellate court. As the basis for your decision, you stated that you "[d]o not like military life." Due to your decision to not petition the U.S. Court of Military Appeals for a grant of review, your sentence was executed as adjudged.

On 11 February 1954, the U.S. Naval Retraining Command reported that, in light of your waiver of restoration and appellate rights, the clemency board unanimously recommended no action in your case. Ultimately, you were discharged from the Navy, on 23 March 1954, with a BCD as a result of conviction at GCM and assigned an RE- 4 reenlistment code.

You previously requested relief through the Board for Correction of Naval Records and were denied relief on 24 July 1961.

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 and change your narrative reason for separation and reenlistment code, (b) your contention that you suffered from undiagnosed mental health conditions due to your stressful family obligations, (c) the impact of your mental health on your conduct during service, (d) your argument that the discharge characterization no longer serves a purpose due to passage of time since the conviction, and (e) your contention that you were erroneously discharged, your discharge was unfair and remains so, and your discharge doesn't reflect your character. For purposes of clemency and equity consideration, the Board noted you provided a character letter from your daughter.

In your petition, you contend that you incurred mental health concerns during military service, which might have mitigated your discharge characterization of service. Specifically, you explain that you went AWOL for a lengthy period of time because you were trying to solve a family crisis, which caused you severe depression and anxiety. 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 8 March 2023. The Ph.D. noted in pertinent part:

There is no evidence that the Petitioner was diagnosed with a mental health condition while in military service, or that he exhibited any psychological symptoms or behavioral changes indicative of a diagnosable mental health

condition. He has provided no medical evidence in support of his claims. Unfortunately, his personal statement is 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) would aid in rendering an alternate opinion.

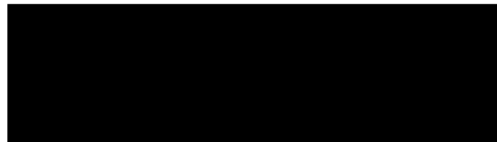
The Ph.D. concluded, "it is my considered clinical opinion there is insufficient evidence of a mental health condition that may be attributed to military service. There is insufficient evidence that his misconduct could be attributed to a mental health condition."

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 during service and the stressful events occurring your life that impacted your conduct. Specifically, the Board felt that your misconduct, as evidenced by your five NJPs, three SCMs, and GCM conviction outweighed these mitigating factors. The Board considered the seriousness of your repeated misconduct and the fact that it involved continuous periods of UA throughout your term of service. 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 conduct was contrary to the Navy's core values and policy, and was detrimental to mission success.

In making this determination, the Board concurred with the advisory opinion that there was no convincing evidence that you were diagnosed with a mental health condition that may be attributed to military service. The Board noted that you did not submit any clinical documentation or treatment records, either in-service or post-service, to support your claims. There is no indication that you raised any of mental health concerns during the disciplinary process. 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. The Board felt that you received advice from qualified counsel through the court martial process and were aware of your rights. While the Board acknowledged that you were dealing with stressful life events, they did not feel that this was sufficiently mitigating. Finally, the Board found no evidence to support your contention that your discharge was erroneous or unfair. As a result, the Board concluded that your conduct constituted a significant departure from that expected of a Sailor and continues to warrant a BCD, as issued by the court. 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 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,



Executive Director

Signed by: 