



**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. 9193-22  
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 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 12 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 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 Navy and began a period of active duty on 17 June 1977. On 27 October 1977 and 18 November 1977, you received non-judicial punishment (NJP) for assault, failure to obey a lawful order, violation of a lawful written regulation by drinking under the legal age, failure to go to your place of duty at the time prescribed, provoking speeches and gestures, and disorderly, drunkenness in command or quarters. On 22 November 1977, you were issued an administrative remarks (Page 13) counseling warning you that a continuation of your past performance may ultimately disqualify you from receiving an honorable discharge. Further, you were warned of the possible effects of the various types of discharge certificates and that if your behavior did not improve you may be processed for a discharge Under Other Than Honorable (OTH) Conditions.

During the period from 17 December 1977 to 7 July 1978, you received three additional NJPs for three periods of unauthorized absence (UA) totaling 23 days. On 10 July 1979, you were convicted by a summary court-martial (SCM) of three specifications of UA totaling 263 days.

Subsequently, you were notified that you were being recommended for administrative discharge from the Navy by reason of misconduct due to frequent involvement of a discreditable nature with military authorities. You were advised that you were subject to and may be separated with a discharge Under Other Than Honorable (OTH) Conditions. You were further advised of your procedural rights and waived them. Your commanding officer (CO) then forwarded your administrative separation package to the separation authority (SA) recommending your administrative discharge from the Navy with a "General" characterization of service. However, the SA disagreed with the recommendation and directed you be discharged with an OTH. On 24 July 1979, you were issued a Report of Separation from Active Duty (DD Form 214) that erroneously listed your assigned characterization of service as "Under Honorable Conditions." On 16 August 1979, you were issued a DD Form 215, which corrected the error on your DD Form 214 by changing your characterization to an OTH.

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 for a discharge upgrade and a disability discharge, along with your contentions that you incurred depression and anxiety while at sea, you were harassed because of your depression, the Navy failed to have you medically evaluated for your mental health conditions, the OTH Conditions discharge has restricted your ability to find employment or benefits, and the Navy failed to allow you to respond or be present when your original discharged was changed "Under Honorable Conditions discharge" to OTH. For purposes of clemency and equity consideration, the Board noted you provided advocacy letters, but no supporting documentation describing post-service accomplishments.

As part of the Board's review process, a qualified mental health professional reviewed your contentions and the available records and issued an AO dated 1 March 2023. The AO noted in pertinent part:

During military service, the Petitioner received medication treatment for an alcohol use disorder. Problematic alcohol use is incompatible with military readiness and discipline and does not remove responsibility for behavior. There is no evidence that he was diagnosed with another mental health condition in military service, or that he exhibited any psychological symptoms or behavioral changes indicative of another mental health condition. 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 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 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 may be attributed to PTSD or another mental health condition."

After thorough review, the Board concluded your potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined your misconduct as evidenced by your five NJPs

and SCM conviction, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct, and concluded it showed a complete disregard for military authority and regulations. The Board also considered the likely negative impact your conduct had on the good order and discipline of your command. Additionally, the Board concurred with the AO that there is insufficient evidence of a diagnosis of PTSD or another mental health condition that may be attributed to military service, and there is insufficient evidence your misconduct may be attributed to PTSD or another mental health condition. As the AO noted, you received medication treatment for an alcohol use disorder. There is no evidence that you were diagnosed with another mental health condition in military service, or that you exhibited any psychological symptoms or behavioral changes indicative of another mental health condition. Unfortunately, the available records are not sufficiently detailed to establish clinical symptoms in service or provide a nexus with your misconduct. Furthermore, the Board 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. Further, the Board took into consideration that you provided no evidence to substantiate your contentions. Finally, the Board found no error or injustice with the Navy's decision to issue you a DD Form 215 that corrected your erroneous DD Form 214. As previously explained, your DD Form 214 erroneously assigned you a General (Under Honorable Conditions) characterization despite the SA's approval of an OTH. The Board determined this change to your DD Form 214 was supported by your record and remains appropriate. The Board determined the Navy had no obligation to allow you to contest the change since you were properly notified, as part of your administrative separation processing, that you were facing the potential of an OTH characterization. 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. 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 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,

4/26/2023

