



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

█  
Docket No. 0572-23

Ref: Signature Date



Dear Petitioner:

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 22 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 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 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). As part of the Board's review, a qualified mental health professional reviewed your request and provided the Board with an Advisory Opinion (AO) on 5 April 2023. Although provided with an opportunity to submit a rebuttal to the AO, 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.

On 28 March 1994, you enlisted in the Navy and began a period of active duty. On 4 April 1994, you were briefed on the Navy's drug and alcohol abuse policy. On 7 December 1994, you received your first nonjudicial punishment (NJP) for failure to obey order or regulation.

Subsequently, you received administrative remarks retaining you in the naval service, documenting your infractions, and advising you that subsequent violations of the UCMJ (Uniform Code of Military Justice) or conduct resulting in civilian conviction could result in administrative separation under Other Than Honorable (OTH) conditions.

On 13 September 1995, you received a second NJP for a two-day period of unauthorized absence (UA), willfully disobeying a lawful order, driving a vehicle while drunk, and wrongfully appropriating a government vehicle/Navy van. This was followed by your third NJP, on 13 November 1995, for disobeying a lawful order. You were subsequently diagnosed as alcohol dependent.

On 28 November 1995, you were notified of your pending administrative separation by reason of pattern of misconduct (POM) and commission of a serious offense, at which time you elected your rights to consult with counsel and have your case heard before an administrative discharge board (ADB). Although you initially elected an ADB, on 5 December 1995, you waived that right. On 6 December 1995, your Commanding Officer (CO) recommended to the separation authority that you be discharged with an OTH. On 17 January 1996, the separation authority directed you be discharged with an OTH for POM. After you refused alcohol rehabilitation treatment, you were so discharged on 21 February 1996.

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 contentions that you incurred PTSD during your enlistment due receiving a gunshot wound to your shoulder. For purposes of clemency and equity consideration, the Board noted you did not provide documentation describing post-service accomplishments or advocacy letters.

Based on your assertions that you incurred PTSD during military service, which might have mitigated the circumstances of your discharge, a qualified mental health professional reviewed your request for correction to your record and provided the Board with an AO. The AO stated in pertinent part:

There is no evidence he was diagnosed with a mental health condition 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 records in support of his claims. Unfortunately, his personal statement is 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 conclude, "it is my clinical opinion there is insufficient evidence of a diagnosis of PTSD that may be attributed to military service. There is insufficient evidence to attribute his misconduct 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 concluded with the AO that there is insufficient evidence of a diagnosis of PTSD that may be attributed to your military service or misconduct. The Board observed that you did not submit any clinical documentation or treatment records to support your mental health claims despite a request from BCNR on 25 January 2023 to specifically provide additional documentary material. The Board determined the record clearly reflected that your active duty misconduct was intentional and willful and demonstrated you were unfit for further service. 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 your record liberally and holistically, there was no 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.

5/30/2023

