



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

█  
Docket No. 876-23  
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 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 29 September 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). Additionally, the Board also considered an advisory opinion (AO) furnished by qualified mental health provider. Although you were afforded an opportunity to submit an AO rebuttal for consideration, 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 originally enlisted in the U.S. Navy and began a period of active duty service on 30 September 1997. Your pre-enlistment physical examination, on 31 March 1997, and self-

reported medical history both noted no psychiatric or neurologic conditions or symptoms. On 15 January 1998, you reported for duty on board the ██████████ in ██████████, ██████████.

On 23 February 1998, you received non-judicial punishment (NJP) for failing to obey a lawful order or regulation. You did not appeal your NJP. On 14 December 1998, you received NJP for failing to obey an order or regulation, and for making, drawing, or uttering a check without sufficient funds. You did not appeal your second NJP.

On 18 March 1999, your command issued you a "Page 13" retention warning (Page 13) documenting your NJP-related misconduct. The Page 13 expressly warned you that any further deficiencies in your performance and/or conduct may result in a special substandard evaluation report, withdrawal of recommendation for advancement, disciplinary action, and/or processing for administrative separation. You did not submit a Page 13 rebuttal statement.

On 16 October 1999, you commenced a period of unauthorized absence (UA), that terminated after seventeen (17) days on 2 November 1999, with your surrender to military authorities. On 17 November 1999, you commenced another UA when you missed movement by design of your scheduled flight, and escaped from the custody of a person authorized to apprehend you. The UA terminated after twelve days (12), on 29 November 1999, with your surrender to military authorities.

On 17 December 1999, you received NJP for both of your UA periods, for missing movement by design, and for escaping from custody. You did not appeal your third NJP.

On 3 January 2000, your command notified you that you were being processed for an administrative discharge by reason of misconduct due to the commission of a serious offense, and misconduct due to a pattern of misconduct. On 4 January 2000, you waived in writing your rights to consult with counsel, submit a statement, and to request a hearing before an administrative separation board. Ultimately, on 20 January 2000, you were discharged from the Navy for misconduct with an under Other Than Honorable conditions (OTH) characterization of service and assigned an RE-4 reentry code.

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 for a discharge upgrade and contentions that: (a) you were discharged for medical reasons and not for misconduct, (b) post-service you have been receiving treatment for unspecified depressive disorder, PTSD, and unspecified anxiety disorder, (c) you are not able to secure adequate employment and proper medical care due to your OTH, (d) being refused veterans' assistance continues to trigger your PTSD and depression, and (e) being constantly denied jobs because of your OTH causes your mental health condition to continue to decline, making it difficult to financially support your family. For purposes of clemency and equity consideration, the Board noted that you did not

submit any evidence in support of your application other than what was stated on your DD Form 149.

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 4 August 2023. The Ph.D. stated in pertinent part:

The Petitioner contends that he had mental health issues that contributed to or caused his misconduct. He indicated that he has been diagnosed with Depression and PTSD post-service and that he has been in treatment, however he did not submit any medical evidence of these post-service diagnoses and/or treatment. On his active duty exit exam dated December 28, 1999, it does read, "Hx [history] of depression, PD [Personality Disorder] and SI [suicidal ideation]." The Petitioner noted on the exam that he overdosed on aspirin two months prior. There are no medical records contained within his available service records by which to verify these statements. Unfortunately, his personal statement is not sufficiently detailed to establish clinical symptoms or provide a nexus with his misconduct. Additional records (e.g., active duty medical records containing the events described by the Petitioner, 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 these potentially mitigating factors were insufficient to warrant relief. In accordance with the Hagel, Kurta, and Wilkie Memos, the Board gave liberal and special consideration to your record of service and your contentions about any traumatic or stressful events you experienced and their possible adverse impact on your service. However, the Board concluded 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. As a result, the Board concluded that your misconduct was not due to mental health-related conditions or symptoms. Moreover, even if the Board assumed that your misconduct was somehow attributable to any mental health conditions, the Board unequivocally concluded that the severity of your misconduct far outweighed any and all mitigation offered by such mental health conditions. The Board determined the record reflected that your 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 not be held accountable for your actions.

The Board did not believe that your record was otherwise so meritorious as to deserve a discharge upgrade. The Board concluded that significant negative aspects of your conduct

and/or performance greatly outweighed any positive aspects of your military record. The Board determined that characterization under OTH conditions is appropriate when the basis for separation is the commission of an act or acts constituting a significant departure from the conduct expected of a Sailor. Moreover, absent a material error or injustice, the Board declined to summarily upgrade a discharge solely for the purpose of facilitating veterans' benefits, or enhancing educational or employment opportunities. As a result, the Board determined that there was no impropriety or inequity in your discharge, and even under the liberal consideration standard, the Board concluded that your misconduct and disregard for good order in discipline clearly merited your discharge. Even in light of the Kurta, Hagel, and Wilkie Memos and reviewing the record liberally and 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,

10/2/2023

