



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

█  
Docket No. 1733-23  
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 statute of limitation was waived in accordance with the 25 August 2017 guidance from the Office of the Under Secretary of Defense for Personnel Readiness (Kurta Memo). A three-member panel of the Board, sitting in executive session, considered your application on 23 October 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 8 September 2023. Although you were afforded an opportunity to submit a 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 Navy and began a period of active service on 6 July 2004. On 24 October 2005, you received nonjudicial punishment (NJP) for two specifications of unauthorized absence (UA), insubordinate conduct, failure to obey a lawful order, and dereliction of duty. On

25 October 2005, you were notified of your pending administrative processing by reason of misconduct – commission of a serious offense (COSO), at which time waived your right to consult with qualified counsel. On 26 October 2005, your commanding officer recommended you be discharged with a general, under other than honorable (GEN) characterization of service by reason of COSO adding, “[Petitioner] has had several problems that continue to disrupt command mission accomplishment. The command has tried on numerous occasions to help him resolve these issues but was unsuccessful due to his constant dishonesty with his chain of command. His blatant disrespect for the rules and regulations of the Navy and his inability to maintain good order in his life outside the command is unacceptable and will not be tolerated.” On 26 October 2005, you discharged with a GEN characterization by reason of Misconduct – COSO.

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 characterization of service and your contentions that: (1) you were discharged due to a singular misconduct error on your part as a result of mental health issues that you were ill advised on dealing with, (2) you subsequently requested a discharge due to your deteriorating mental health and personal issues, (3) you had not been in trouble or subject to any UCMJ (Uniform Code of Military Justice) punishment prior to this event, (4) you were granted your discharge but for POM (Pattern of Misconduct) reasons but this was unwarranted as you never were in any other trouble, and (5) following your discharge you sought mental health help and were able to enlist and serve in the Army for 15 years, promoted to E-5, participated in several deployments, and earned several awards. For purpose of clemency and equity consideration, the Board noted you provided a Department of Veterans Affairs (DVA) summary of benefits letter and a copy of your Certificate of Release or Discharge from Active Duty (DD Form 214) from your Army service.

Based on your assertions that you incurred other mental health concerns during military service, which might have mitigated your discharge characterization of service, 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:

The Petitioner submitted VA rating indicating 100% service connection (Petitioner went on to serve 15 years in the Army after being separated from the Navy.) The Petitioner contends that he was suffering from mental health issues during service which caused his misconduct. Review of records indicate that his Command wrote of him, “His blatant disrespect for the rules and regulations of the Navy and his inability to maintain good order in his life outside the command is unacceptable and will not be tolerated.” There is no evidence that the Petitioner was diagnosed with a mental health condition or that he exhibited any psychological symptoms or behavioral changes indicative of a diagnosable mental health condition while in service. 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 AO conclude, “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. Specifically, the Board determined that your misconduct, as evidenced by your NJP, 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, character of service is based, in part, on military behavior/character and overall trait averages which are computed from marks assigned during periodic evaluations. Your military behavior/character average was 2.0. An average of 2.5 in military behavior/character was required at the time of your separation for a fully Honorable characterization of service. Lastly, the Board agreed with the AO that there is insufficient evidence of a mental health condition that may be attributed to your military service or misconduct. As explained in the AO, there is no evidence that you were diagnosed with a mental health condition or that you exhibited any psychological symptoms or behavioral changes indicative of a diagnosable mental health condition while in service. Additionally, the Board noted you were physically qualified to serve in the Army after your Navy service. As a result, the Board concluded significant negative aspects of your service outweigh the positive aspects and continues to warrant a GEN characterization of service. While the Board carefully considered the evidence you submitted in mitigation, 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. Ultimately, the Board concluded the mitigating 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 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.

Sincerely,

10/31/2023

