



**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. 2305-23  
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 27 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 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 and your response to the AO.

You enlisted in the U.S. Navy and began a period of active duty service on 23 September 1987. Your pre-enlistment physical examination, on 7 July 1987, and self-reported medical history both noted no psychiatric or neurologic conditions, symptoms, or treatment/counseling history.

On 7 April 1989, your command issued you a "Page 13" counseling warning (Page 13) for disobeying petty officers and officers, unauthorized absences, and lying. The Page 13 advised

you that further deficiencies in performance and/or conduct may result in disciplinary action and in processing for administrative discharge. You did not submit a Page 13 rebuttal statement.

However, on 1 June 1989, you received non-judicial punishment (NJP) for insubordinate conduct. You did not appeal your NJP. On 29 June 1989, you received NJP for two separate specifications of failing to obey a lawful order. You did not appeal your second NJP.

Following your second NJP, your command notified you that you were being processed for an administrative discharge by reason of misconduct. In the interim, your separation physical examination, on 20 September 1989, did not note any psychiatric or neurologic conditions or symptoms. Ultimately, on 4 October 1989, 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 changes to your narrative reason for separation, separation code, and reentry code. You contend that: (a) the Board grant liberal consideration to your case and upgrade your discharge-taking into account your medical treatment for severe, service-related injuries, PTSD, and ongoing chronic and service-related health conditions, (b) your behavior leading to your discharge was consistent with PTSD symptoms and alterations in judgment from medications you were given to treat your injuries, (c) your prior service was pristine, and your discharge stemmed from brief, relatively minor post-injury events, (d) if you served today, you would not have been discharged, and you would have been helped, (e) although you continue to severely and chronically suffer from your service-related injuries and resulting PTSD, your post-discharge conduct has been honorable that has included regularly volunteering to assist fellow veterans and community youth, (f) you suffered a career-ending disablement to your knee and back, and as a result of such injuries and the treatments and PTSD stemming from them, a Medical Board placed you on LIMDU for multiple months, (g) you underwent knee surgery and the pain medications you received caused side effects including impaired judgment, (h) the VA granted you a service-connection for PTSD, (i) you have PTSD related to your military injury and you had no prior disciplinary issues, (j) your misconduct was linked to your in-service injuries, medication, and mental health condition, which should be viewed as mitigating factors under new directives, and (k) if not for your injuries and resulting PTSD, your service met the acceptable standard. For purposes of clemency and equity consideration, the Board considered the entirety of the evidence you provided in support of your application.

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 10 July 2023. The Ph.D. stated in pertinent part:

There is no evidence of a diagnosis of PTSD during military service. Post-service, the VA has diagnosed PTSD temporally remote from service that has been attributed to military service. Unfortunately, available records are not sufficiently

detailed to establish a nexus with his misconduct. It is difficult to attribute his disobedience to PTSD symptoms, given inconsistencies in the record. 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 Ph.D. concluded, "it is my clinical opinion there is post-service evidence from the VA of a diagnosis of PTSD that may be attributed to military service. There is insufficient evidence to attribute his misconduct to PTSD."

Following a review of your AO rebuttal submission, the Ph.D. did not change or otherwise modify their original AO.

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 of any nexus between any PTSD or other mental health conditions and/or related symptoms and your misconduct, and determined that there was insufficient evidence to support the argument that any such PTSD or other mental health conditions 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. 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 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. 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,

11/1/2023

