



**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. 2601-23  
4948-15  
6989-14  
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.

Because your application was submitted with new evidence not previously considered, the Board found it in the interest of justice to review your application. A three-member panel of the Board, sitting in executive session, considered your application on 27 November 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 25 August 2017 guidance from the Office of the Under Secretary of Defense for Personnel and Readiness (Kurta Memo), the 3 September 2014 guidance from the Secretary of Defense regarding discharge upgrade requests by Veterans claiming post-traumatic stress disorder (PTSD)/mental health condition (MHC) (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 4 October 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 previously applied for twice to this Board for a change to your reentry code and were denied on 8 May 2015 and 11 April 2016. You also applied to the Naval Discharge Review Board (NDRB). The NDRB denied your request, on 20 April 2000, after determining that your discharge was proper as issued.

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 and Wilkie Memos. These included, but were not limited to your desire to change your reentry code to a medical discharge and receive “compensation benefits.” You contend that: (1) you incurred mental health concerns during military service, (2) you were sent to medical for sharp pains in your mid-section and were told by a Warrant Officer that you had appendicitis, (3) another officer came along, examined you, and you were told you had an intestinal virus, (4) you were then sent back to your unit and called by the Warrant Officer who previously diagnosed you with appendicitis claiming he reported to his superior that you refused training, and (5) you were placed on sleepers for seven days, which caused you depression and anxiety. For purposes of clemency and equity consideration, the Board noted you provided medical and Department of Veterans’ Affairs (VA) documents.

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 disability rating indicating 30% service connection for Generalized Anxiety Disorder and Depression Mood. He also submitted a letter dated January 2, 2008 from a treating psychiatrist who noted that Petitioner’s anxiety was likely due to having been sent to “sleepers.” It is not known what “sleepers” is, however there are no records contained within his file that indicate that he was distraught or experienced any mental health symptoms as a result of “sleepers.” His administrative notes indicate a desire to return home to care for his mother, disregard for authority, and poor motivation for continued training. There is no evidence that the Petitioner was diagnosed with a mental health condition while in military service, or that he exhibited any psychological symptoms or behavioral changes indicative of a diagnosable mental health condition. He submitted temporally remote evidence of post-service diagnoses from the VA.

The AO 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 RE-4 code was given in error.”

After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your conduct, as evidenced by your refusal to demonstrate reasonable effort, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your conduct and found that it showed a complete disregard for military authority and regulations. Additionally, the Board agreed with

the AO that there is insufficient evidence of a mental health condition that may be attributed to military service or that your reentry code was issued in error. Finally, the Board noted there was insufficient evidence to support a finding that you were unfit for continued naval service as a result of a qualifying disability condition. The Board considered that you were not placed on limited duty or referred to a medical board by any medical provider. As a result, the Board concluded your conduct constituted a significant departure from that expected of a service member and continues to warrant an RE-4 reentry code. 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. 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, \_\_\_\_\_

12/5/2023

