



**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. 3049-23  
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 and Readiness (Kurta Memo). A three-member panel of the Board, sitting in executive session, considered your application on 2 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 August 2023. Although you were afforded an opportunity to submit a rebuttal, you chose not to do so.

You enlisted in the Navy and began a period of active service on 23 July 1999. On 31 May 2001, you received your first nonjudicial punishment (NJP) for failure to obey order or regulations and false official statements. On 30 August 2001, you received a second NJP for failure to obey an order or regulation and for a period of unauthorized absence (UA) totaling 50 days and ending in your apprehension. You were subsequently notified of your pending administrative processing by reason of commission of a serious offense (COSO), at which time you waived your right to consult with counsel and to have your case heard before an

administrative discharge board. On 19 March 2002, the separation authority directed you be discharged with an Other Than Honorable (OTH) characterization of service for COSO. On 29 March 2002, you were so discharged.

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 contention that you incurred PTSD and other mental health concerns during military service based on your service onboard █ and █ as a firefighter. For purposes of clemency and equity consideration, the Board noted you provided Department of Veterans Affairs documents, a photo of the cover of your recruit training book, and official military personnel files to include certificates of completion and a letter of commendation.

Based on your assertions that you incurred PTSD and other mental health concerns during military service, which might have mitigated the circumstances of your separation, 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:

During military service, the Petitioner was evaluated by a military psychiatrist and recommended for administrative separation. While the results of the evaluation are not available for review, there is no evidence of a recommendation for evaluation for medical separation. Post-service, the Petitioner has received treatment for a number of mental health concerns that are temporally remote to his military service and appear unrelated. There is no evidence of a diagnosis of PTSD. Unfortunately, the Petitioner's statement is not sufficiently detailed to establish clinical symptoms in service or provide a nexus with his misconduct. Additional records (e.g., complete post-service mental health records describing the Petitioner's diagnosis, symptoms, and their specific link to his misconduct) may contribute to an alternate opinion.

The AO conclude, "it is my clinical opinion there is insufficient evidence of a diagnosis of PTSD or another mental health condition that may be attributed to military service. There is insufficient evidence to attribute his misconduct to PTSD or another 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 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 agreed with the AO that there is insufficient evidence of a diagnosis of PTSD or another mental health condition that may be attributed to your military service or misconduct. As explained in the AO, there is no evidence of a diagnosis of PTSD and your statement is not sufficiently detailed to establish clinical symptoms in service or provide a nexus with your misconduct. 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. 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 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,

10/17/2023

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Executive Director

Signed by: █