



**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. 4050-23

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 limitations 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 6 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 service 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)/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). The Board also considered an advisory opinion (AO) from a qualified mental health professional. Although you were afforded an opportunity to submit an AO 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 United States Navy and commenced a period of service on 22 July 1989. On 5 March 1991, you received non-judicial punishment (NJP) for violation of Uniform Code of Military Justice (UCMJ) Article 86, for eight hours of unauthorized absence (UA), and Article 91, for disobedience. You were formally counseled based on this misconduct and notified that further

misconduct could result in your administrative separation. On 2 April 1991, you received your second NJP for violation of UCMJ Article 86, for two specifications of UA from your place of duty. On 14 May 1991, you received your third NJP for violation of UCMJ Article 86, for two periods of UA totaling 19 hours, and Article 123, for writing three bad checks. On 18 June 1991, you received your fourth NJP for violation of UCMJ Article 86, for three periods of UA totaling three days. You did not appeal any of these NJPs.

On 24 June 1991, you were notified that you were being processed for an administrative discharge by reason of pattern of misconduct. You waived your right to consult with qualified counsel and your right to present your case at an administrative separation board. During your separation physical, on 2 July 1991, you denied any mental health concerns or symptoms and stated “I feel healthy.” On 19 August 1991, you were discharged from the Navy with an Other than Honorable (OTH) characterization of service and assigned an RE- 4 reentry code.

The Board carefully considered all potentially mitigating and/or extenuating 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: (a) your desire to upgrade your characterization of service, (b) your contention that you were suffering from undiagnosed mental health issues during service, and (c) the impact that your mental health had on your conduct. For purposes of clemency consideration, the Board noted that you provided documentation related to your post-service accomplishments and a character letter.

In your request for relief, you contend that you were singled out and wrongfully accused of UA when you were actually experiencing depression. 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 28 September 2023. The Ph.D. noted in pertinent part:

There is no evidence the Petitioner was diagnosed with a mental health condition in military service, or that he exhibited any psychological symptoms or behavioral changes indicative of a diagnosable mental health condition. He has provided no medical evidence in support of his claims. Unfortunately, available records are not sufficiently detailed to establish clinical symptoms in service 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) may aid in rendering an alternate opinion.

The Ph.D. concluded, “it is my clinical opinion there is insufficient evidence of a mental health condition that may be attributed to military service. There is insufficient evidence to attribute his misconduct to a mental health condition.”

After thorough review, the Board concluded the potentially mitigating factors were insufficient to warrant relief. In accordance with the Kurta, Hagel, and Wilkie Memos, the Board gave liberal and special consideration to your record of service, and your contentions about undiagnosed mental health issues and the possible adverse impact on your service. Specifically, the Board felt that your misconduct, as evidenced by your NJPs, outweighed these mitigating factors. The Board considered the seriousness of your misconduct and the fact that it involved

repeated periods of UA and writing bad checks. Further, the Board also considered the likely negative impact your conduct had on the good order and discipline of your command. The Board determined that such misconduct is contrary to the Navy core values and policy, and places an unnecessary burden on fellow shipmates.

In making this determination, the Board concurred with the advisory opinion 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. You provided no evidence in support of your contentions, despite the Board requesting such evidence on 17 May 2023. There is also no evidence in the record that you raised such mental health concerns during your separation processing. As a result, the Board concluded that your misconduct was not due to mental health-related symptoms. The Board determined the record clearly reflected that your active duty 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 otherwise not be held accountable for your actions. The Board concluded that your conduct constituted a significant departure from that expected of a Sailor and continues to warrant an OTH characterization.

Therefore, while the Board carefully considered the evidence you submitted in mitigation, even in light of the Wilkie Memo and reviewing the record 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,

11/8/2023

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Executive Director

Signed by: █