



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

█  
Docket No. 5035-23  
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 19 January 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). The Board also considered the advisory opinion (AO) furnished by a qualified mental health professional. Although you were provided an opportunity to respond to the AO, 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 Naval Reserve and commenced a period of active duty on 22 July 1985. On 22 August 1985, you received non-judicial punishment (NJP) for failure to obey a lawful order. Additionally, you were issued an administrative remarks counseling concerning deficiencies in your performance and/or conduct. You were advised that any further deficiencies in your performance and/or conduct may result in disciplinary action and in processing for administrative discharge. On 3 March 1986, you again received NJP, this time for unauthorized

absence (UA). You were again issued an administrative remarks counseling concerning deficiencies in your performance and /or conduct. However, on 8 August 1986, you received a third NJP, for UA. You were again issued administrative remarks, for frequent disregard of the rules. Subsequently, between 21 and 24 May 1987, and between 28 May and 5 June 1987, you commenced two periods of UA, both ended by surrender. On 27 June 1987, you received NJP for a fourth time, for UA, followed by a fifth NJP, on 17 December 1987, also for UA, in addition to failure to obey a lawful order or regulation.

Unfortunately, the documents pertinent to your administrative separation are not in your official military personnel file (OMPF). Notwithstanding, the Board relies on a presumption of regularity to support the official actions of public officers and, in the absence of substantial evidence to the contrary, will presume that they have properly discharged their official duties. Based on the information contained on your Certificate of Release or Discharge from Active Duty (DD Form 214), you were separated on 6 January 1988 with an “Under Other Than Honorable Conditions (OTH)” characterization of service, your narrative reason for separation is “Misconduct,” your reentry code is “RE-4,” and your separation code is “HKA,” which corresponds to misconduct – frequent involvement of a discreditable nature with civil or military authorities.

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 change your discharge characterization of service and your contentions that you fulfilled the 2-year requirement for an upgrade, you were subjected to unethical treatment by your superiors due to harassment and personal bias, you received no counseling; and you have been traumatized by these incidents.

The Board noted you checked the “Reprisal/Whistleblower” box on your application but chose not to respond to the 15 June 2023 letter from the Board requesting evidence in support of your claim. For purposes of clemency and equity consideration, the Board noted you did not provide supporting documentation describing post-service accomplishments or advocacy letters.

As part of the Board’s review process, a qualified mental health professional reviewed your contentions and the available records and issued an AO dated 28 November 2023. The AO noted in pertinent part:

There is no evidence that he 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 to support 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 AO concluded, “it is my clinical opinion there is insufficient evidence of a diagnosis of PTSD that may be attributed to military service. There is insufficient evidence to attribute his misconduct to PTSD.”

After thorough review, the Board concluded your 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 the likely negative impact your repeated misconduct had on the good order and discipline of your command. Finally, the Board noted that you were given multiple opportunities to address your conduct issues but you continued to commit misconduct, which ultimately led to your administrative separation.

Additionally, the Board concurred with the AO and determined that, although you contend you were traumatized by treatment you received in service, there is insufficient evidence of a diagnosis of PTSD that may be attributed to military service, and there is insufficient evidence to attribute your misconduct to PTSD. As the AO noted, you provided no medical evidence to support your claim, and there is no evidence that you exhibited any psychological symptoms or behavioral changes indicative of a diagnosable mental health condition while in service. The Board also agreed that the available records are not sufficiently detailed to establish clinical symptoms in service or provide a nexus with your misconduct.

Regarding your contention that you fulfilled the 2-year requirement for an upgrade, the Board noted that there is no provision of federal law or in Navy regulations that allows for a discharge to be automatically upgraded after a specified number of months or years. Regarding your contention you received no counseling, although your application does not make clear what sort of counseling you refer to, as outlined above, you received multiple adverse administrative counselings related to your misconduct, which is documented in your official record.

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. 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 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,

2/12/2024

