



**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. 6215-23

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 10 April 2024. 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). The Board also considered the advisory opinion (AO) furnished by a qualified mental health professional, which was previously provided to you. Although you were afforded an opportunity to submit an AO rebuttal, you chose not to do so.

You enlisted in the Navy and began a period of active duty on 2 October 1981. On 26 March 1982, you received non-judicial punishment (NJP) for assault. On 8 April 1982, you receive a second NJP for disrespect toward a Petty Officer and two specifications of failure to obey a lawful order. On 16 April 1982, you received a third NJP for breaking restriction.

Consequently, you were notified that you were being recommended for administrative discharge from the Navy by reason of misconduct due to frequent involvement of a discreditable nature with military authorities. You waived your right to consult with military counsel and to present your case to an administrative discharge board. The commanding officer forwarded your administrative separation package to the separation authority (SA) recommending your administrative discharge from the Navy with an Other Than Honorable (OTH) characterization of service. The SA approved the recommendation for administrative discharge and directed your OTH discharge from the Navy by reason of misconduct due to frequent involvement. On 25 May 1982, 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 discharge character of service and contentions that the racist biases and physical and mental mistreatment you experienced led to your discharge, your discharge was harsher and more punitive due to the racism that existed in the Navy, and you did not know that your discharge would affect you negatively in receiving Department of Veterans Affairs (VA) benefits for which you are now service connected. For purposes of clemency and equity consideration, the Board considered the documentation you provided in support of your application.

As part of the Board's review, a qualified mental health professional reviewed your contentions and the available records and provided the Board with an AO on 27 February 2024. The AO stated in pertinent part:

There is no evidence that he was diagnosed with a mental health condition in military service. There is no evidence of a diagnosis of PTSD, but there is post-service evidence that is temporally remote to his military service of mental health diagnoses, including a trauma-related mental health condition, that have been attributed to military service by civilian providers. Unfortunately, there is insufficient evidence to attribute his misconduct to experiences incurred during military service, given his behavior prior to joining the Navy that made him unsuitable for Marine service and appears to have continued during his Navy service. 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 post-service evidence from civilian mental health providers of mental health conditions that may be attributed to military service. There is insufficient evidence to attribute his misconduct to a mental health condition incurred during military service."

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 brevity of your service during which you committed these multiple offenses and the seriousness of your misconduct. The Board concluded your misconduct showed a complete disregard for

military authority and regulations. Further, the Board concurred with the AO that while there is post-service evidence from civilian mental health providers of mental health conditions that may be attributed to military service, there is insufficient evidence to attribute your misconduct to a mental health condition incurred during military service. As the AO explained, there is insufficient evidence to attribute your misconduct to experiences incurred during your military service, given your behavior prior to joining the Navy that made you unsuitable for Marine service and appears to have continued during your Navy service, and there is no evidence that you were diagnosed with a mental health condition in military service. Therefore, the Board 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 noted that you were provided multiple opportunities to correct your conduct deficiencies during your service; however, you continued to commit additional misconduct. Your offenses of assault, disrespect, failure to obey a lawful order, and breaking restriction not only showed a pattern of misconduct but were sufficiently serious to negatively affect the good order and discipline of your command.

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,

4/24/2024

