



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

█  
Docket No. 7002-23

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 18 March 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 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 provided an opportunity to comment on the AO, you chose not to do so.

You enlisted in the United States Navy and commenced a period of service on 2 November 1977. On your enlistment application, you acknowledged a pre-service arrest for outstanding checks. On 28 March 1978, you began a period of unauthorized absence (US) from your appointed place of duty, and remained absent until your return to military control on 13 April 1978. You began a second period of UA, on 19 April 1978, and were declared a deserter on 19 May 1978. On 9 November 1978, while in a UA status, you were apprehended by civilian authorities on charges of armed robbery.

While in pre-trial confinement awaiting your civilian criminal trial, you were hospitalized in a civilian psychiatric facility from 2 May 1979 to 9 August 1979 for a possible “psychotic depression...since March 1978... precipitated by a heavy drinking and...ingestion of... [illegal drugs], stresses of military life, and absence of wife.” Upon discharge from the hospital, you were found to be “not suffering from mental disease or mental defect and he could assist...in the preparation of his defense.” On 11 October 1979, you were convicted of armed robbery and sentenced to eight years imprisonment with credit for one-year time served.

On 30 November 1980, you were notified that you were being processed for an administrative discharge by reason of misconduct based on civilian conviction for armed robbery. You elected your right to consult with qualified counsel and your right to present your case at an administrative separation (ADSEP) board. On 21 January 1981, by a vote of 3 to 0, the ADSEP board recommended your separation with an Other Than Honorable (OTH) characterization of service. On 15 May 1981, you were discharged in absentia from the Navy due to your misconduct with an 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 your service, and (c) the impact that your mental health had on your conduct. For purposes of clemency and equity consideration, the Board noted that you did not provide evidence of your post-service accomplishments or character letters.

In your request for relief, you contend that you incurred mental health concerns due to personal and professional stressors during military service, which drove you to go UA and commit misconduct. In support of your request, you submitted your psychiatric hospital discharge summary from █ State Hospital. 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 29 January 2024. The Ph.D. noted in pertinent part:

Petitioner was appropriately referred for psychological evaluation and properly evaluated during an inpatient hospitalization. His absence of mental health diagnosis was based on observed behaviors and performance during the hospitalization, the information he chose to disclose, and the psychological evaluations performed. Unfortunately, he has provided no medical evidence to support his claims. Furthermore, it is difficult to consider how PTSD or another mental health condition would account for his misconduct, which is not typical of a mental health condition. 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 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 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 extended periods of UA and your civilian criminal conviction, outweighed these mitigating factors. The Board considered the seriousness of your misconduct and the fact that it involved armed robbery while in a deserter status. Further, the Board also considered the likely negative impact that your absence had on your chain of command and the burden it placed on your peers. The Board determined that such misconduct is contrary to the Navy core values and policy and renders such Sailor unfit for duty.

In making this determination, the Board concurred with the AO 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. Your in-service misconduct appears to be consistent with your pre-service behavior, rather than evidence of a mental health condition incurred in or exacerbated by military service. The psychiatric hospital specifically found you fit to stand trial and that you were “not suffering from mental disease or mental defect.” You did not provide any post-service medical documents in support of your contention and your application fails to draw sufficient nexus to the underlying misconduct. 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, 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,

3/29/2024

