



**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. 7650-23  
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 12 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). Additionally, the Board also considered an advisory opinion (AO) furnished by qualified mental health provider and your response to the AO.

You enlisted in the U.S. Navy and began a period of active duty service on 19 August 1990. Your pre-enlistment physical examination, on 21 October 1989, and self-reported medical history both noted no psychiatric or neurologic issues or symptoms. On 28 November 1990, you reported for duty on board the █ (█) in █, █.

On 31 May 1991, your command issued you a "Page 13" retention warning (Page 13) documenting your unauthorized absence (UA) from your appointed place of duty, dereliction of duty, and disobeying a direct order. The Page 13 advised you that any further deficiencies in

performance and/or conduct may result in disciplinary action in addition to processing for an administrative discharge.

On 1 October 1991, you commenced a UA that terminated on 7 October 1991. On 25 October 1991, you received non-judicial punishment (NJP) for your 6-day UA and for drinking underage. You did not appeal your NJP.

On 1 June 1992, you commenced a UA that terminated on 3 June 1992. On 10 June 1992, you received NJP for your two-day UA. You did not appeal your NJP.

On 30 January 1993, you commenced a UA that terminated on 2 February 1993. On 12 February 1993, you received NJP for your three-day UA. You did not appeal your NJP. On 20 February 1993, your command issued you a Page 13 documenting your latest NJP. The Page 13 advised you that any further deficiencies in performance and/or conduct may result in disciplinary action and in processing for administrative separation.

However, on 6 October 1993, you commenced another UA. While in a UA status you missed your ship's movement on 14 October 1993. Your UA terminated on 4 November 1993. On 18 November 1993, you received NJP for your 29-day UA and for missing movement. You did not appeal your NJP.

On 19 November 1993, your command notified you that you were being processed for an administrative discharge by reason of misconduct due to a pattern of misconduct. You waived in writing your rights to consult with counsel, submit a written statement, and to request a hearing before an administrative separation board.

In the interim, on 3 December 1993, your separation physical examination and self-reported medical history noted no neurologic or psychiatric issues or symptoms. Ultimately, on 6 December 1993, you were discharged from the Navy for misconduct with an under Other Than Honorable conditions (OTH) discharge characterization and assigned an RE-4 reentry code.

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 for a discharge upgrade and contentions that: (a) you experienced family hardships on active duty; your grandfather died, your dad divorced, plus other family issues, (b) your mental status wasn't the best and your mind was elsewhere, (c) you are hard working citizen and overall good person, and (d) you have held long term jobs, been married over twenty (20) years, and coached little league. For purposes of clemency and equity consideration, the Board considered the entirety of the evidence you provided in support of your application.

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 21 February 2024. The Ph.D. stated 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 submitted no medical evidence to support his claims. Unfortunately, his personal statement is 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 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. In accordance with the Hagel, Kurta, and Wilkie Memos, the Board gave liberal and special consideration to your record of service and your contentions about any traumatic or stressful events you experienced and their possible adverse impact on your service. However, the Board concluded 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. As a result, the Board concluded that your misconduct was not due to mental health-related conditions or symptoms. Additionally, even if the Board assumed that your misconduct was somehow attributable to any mental health conditions, the Board unequivocally concluded that the severity of your misconduct far outweighed any and all mitigation offered by such mental health conditions. The Board determined the record reflected that your 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 not be held accountable for your actions.

The Board observed that character of military service is based, in part, on conduct and overall trait averages which are computed from marks assigned during periodic evaluations. Your overall active duty trait average calculated from your available performance evaluations during your enlistment was approximately 2.73 in conduct. Navy regulations in place at the time of your discharge recommended a minimum trait average of only 3.0 in conduct (proper military behavior), for a fully honorable characterization of service. The Board concluded that your misconduct was not minor in nature and that your conduct marks during your active duty career were a direct result of your serious misconduct and further justified your OTH characterization.

The Board did not believe that your record was otherwise so meritorious as to deserve a discharge upgrade. The Board concluded that significant negative aspects of your conduct and/or performance greatly outweighed any positive aspects of your military record. The Board determined that characterization under OTH conditions is appropriate when the basis for separation is the commission of an act or acts constituting a significant departure from the conduct expected of a Sailor. The simple fact remains is that you left the Navy while you were

still contractually obligated to serve and you went into a UA status without any legal justification or excuse on no less than four (4) separate occasions totaling approximately forty (40) days.

As a result, the Board determined that there was no impropriety or inequity in your discharge and concluded that your misconduct and disregard for good order in discipline clearly merited your discharge. While the Board commends you for your post-discharge good character, 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,

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4/18/2024

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