



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

█  
Docket No. 8824-23  
Ref: Signature Date

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Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to Title 10, United States Code, Section 1552. 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 6 May 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 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, 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 the advisory opinion (AO) furnished by a qualified mental health professional, dated 22 March 2024. Although you were afforded an opportunity to submit an AO rebuttal, you chose not to do so.

You enlisted in the Marine Corps and began a period of active duty on 19 September 1988. On 27 November 1989, you began a period of unauthorized absence (UA) which lasted four-days and resulted in nonjudicial punishment (NJP) on 7 December 1989. On 7 February 1990, you began a second period of UA which lasted 24 days and resulted in your second NJP on 15 March 1990. On 6 April 1990, you received a third NJP for disobeying a lawful order. On 10 April 1990, you were counseled concerning deficiencies in the area of strong lack of discipline, which resulted in

numerous incidents of misconduct. You were advised that failure to take corrective action could result in administrative separation. On 13 October 1990, you began a third period of UA which lasted two-days. On 30 October 1990, you were evaluated by a medical officer as a result of suicidal ideation and diagnosed with an Adjustment Disorder. On 6 November 1990, you received a fourth NJP for a period of UA. Consequently, you were notified of the initiation of administrative separation proceedings by reason of misconduct due to pattern of misconduct, at which point, you decided to waive your procedural rights. Your commanding officer recommended an Other Than Honorable (OTH) discharge characterization of service by reason of misconduct due to pattern of misconduct. After legal review, the separation authority approved the recommendation. On 31 January 1991, 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 for a discharge upgrade and contention that: (a) the OTH discharge that was granted to you 32 years ago was in no way indicative of your character then or now, (b) you assumed that the administrative separation was based on your periods of UA and did not take into account your mental health condition including your undiagnosed depression suffered during age 18 to 21, (d) your periods of UA were due to your battle with mental health illness, (e) you were only offered counseling by the chaplain and never afforded the required mental health treatment, (f) you are three weeks closer to retire as a firefighter and your therapy has been to dedicate your life in service of others. For purposes of clemency and equity consideration, the Board noted you did provide copies of three character letters of support and evidence of post-discharge accomplishments.

As part of the Board's review, the Board considered the AO. The AO stated in pertinent part:

Petitioner was appropriately referred for psychological evaluation and properly evaluated during his enlistment. His Adjustment disorder diagnosis was based on observed behaviors and performance during his period of service, the information he chose to disclose, and the psychological evaluation performed by the mental health clinician. Unfortunately, available records are not sufficiently detailed to establish a nexus with his misconduct, give his history of misconduct in the year before he was diagnosed. 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 in-service 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 these 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 fact it included several periods of UA, and failure to obey orders. Further, the Board found that your conduct showed a complete disregard for military authority and regulations. Additionally, the Board concurred with the AO that there is

insufficient evidence that your misconduct could be attributed to a mental health condition. As explained in the AO, available records are not sufficiently detailed to establish a nexus with your misconduct, given your history of misconduct in the year before you were diagnosed. Finally, the Board noted you were given multiple opportunities to correct your conduct deficiencies but chose to continue to commit misconduct.

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 and commends you for your post-discharge accomplishments, 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 the 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,

5/22/2024

