



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

█  
Docket No. 1102-24  
Ref: Signature Date

█  
█  
█

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 29 July 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 11 June 2024, which was previously provided to you. Although you were afforded an opportunity to submit an AO rebuttal, you chose not to do so.

Regarding your request for a personal appearance, the Board determined that a personal appearance with or without counsel will not materially add to their understanding of the issue(s) 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 Navy and began a period of active duty on 19 September 1979. On 13 April 1980, you began a period of unauthorized absence (UA) which lasted one-day and resulted in

nonjudicial punishment (NJP) on 18 April 1980. On 21 November 1980, you began a second period of UA which lasted three-days. On 29 November 1980, you received a second NJP for a period of UA, failure to obey an order, provoking speech, and assault. On 18 April 1981, you began a third period of UA which lasted two-days. On 24 April 1981, you were counseled concerning your misconduct and advised that failure to take corrective action could result in administrative separation. Then, between 1 May 1981 to 11 May 1981, you had two periods of UA totaling seven-days and resulting in your third NJP upon your return. That same day, you commenced a sixth period of UA which lasted 177 days and resulted in you missing movement on 12 May 1981. On 20 November 1981, you began a seventh period of UA which lasted three-days and resulted in your fourth NJP on 4 December 1981. On 10 December 1981, you were convicted by special court martial (SPCM) for your 177-day UA. You were sentenced to reduction in rank, confinement at hard labor, and forfeiture of pay. Consequently, you were notified of the initiation of administrative separation proceedings by reason of misconduct due to frequent involvement. You decided to waive your procedural rights and your commanding officer recommended an Other Than Honorable (OTH) by reason of misconduct due to frequent involvement. On 5 February 1982, you were so discharged.

On 27 May 2015, this Board denied your previous request for a discharge characterization upgrade.

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 had a problem with your knees and went to sick call on the ship because your knees were swelling up and holding fluid, (b) you asked to be sent to a hospital in █ Naval Hospital and was told that you will need permission from your commanding officer to be transferred, (c) your request for transfer was denied by your commanding officer as you were needed on the ship and could not be spared from your job, (d) you exhausted all efforts to see what was wrong with your legs and decided to go UA, (e) while on UA, you receive orthopedic care from a doctor in your hometown and your knees began to feel better through medication, (f) following your return from UA, you were placed on the brig and your legs began getting worse, (g) you believe your discharge should be upgraded so you may be eligible for veterans' benefits. 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, the Board considered the AO. The AO 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. Throughout his disciplinary processing, there were no concerns raised of a mental health condition that would have warranted a referral for evaluation. He has provided no medical evidence in support of his claims. Unfortunately, his personal statement is not sufficiently detailed to establish clinical symptoms in service or provide a nexus with his misconduct. Although he did experience significant medical difficulties

due to his knee problems, it is difficult to attribute his misconduct to a mental health condition that developed in response to the stress of his physical ailments, given his misconduct prior to his knee 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 AO concluded, "it is my clinical opinion there is insufficient evidence of a diagnosis of PTSD or another mental health condition. 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. Specifically, the Board determined that your misconduct, as evidenced by your NJPs and SPCM, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and found that your conduct showed a complete disregard for military authority and regulations. The Board was not persuaded by your contentions that you went UA to receive medical treatment for your knees and noted you provided no evidence, other than your statement, to substantiate your contentions. Further, the Board considered the likely negative effect your conduct had on the good order and discipline of your unit. 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, you provided no medical evidence in support of your claim. Finally, absent a material error or injustice, the Board declined to summarily upgrade a discharge solely for the purpose of facilitating veterans' benefits or enhancing educational or employment opportunities.

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 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,

8/21/2024

