



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

█  
Docket No. 1731-24  
Ref: Signature Date

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Dear █

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 24 June 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 14 June 2024. The AO was considered favorable to your case.

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 10 February 2003. On 17 February 2004, you received nonjudicial punishment (NJP) for assault consummated by battery. On

10 March 2004, you were counseled concerning deficiencies in performance and conduct as evidence by NJP. You were advised that failure to take corrective action could result in administrative separation. Between 5 April 2004 and 22 November 2004, you had three periods of unauthorized absence (UA) totaling two days and 15 minutes. On 1 December 2004, you received a second NJP for a period of UA. On 10 February 2005, you received a third NJP for a period of UA. Consequently, you were processed for administrative separation due to your misconduct.

Unfortunately, the documents pertinent to your administrative separation are not in your official military personnel file (OMPF). Notwithstanding, the Board relies on a presumption of regularity to support the official actions of public officers and, in the absence of substantial evidence to the contrary, will presume that they have properly discharged their official duties. Your Certificate of Release or Discharge from Active Duty (DD Form 214), reveals that you were separated from the Navy on 16 March 2005 with an Other Than Honorable (OTH) characterization of service, your narrative reason for separation is "Pattern of Misconduct" your separation code is "HKA," and your reenlistment code is "RE-4."

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 were under the supervision of a psychiatrist who deem you were mentally unstable and suffering from depression disorder, (b) you assert that some of your issues were related to your age, lack of maturity, and mental instability, (c) you were facing significant family issues that required immediate attention and support, (d) your were physically and mentally abused by your father, (e) you decided to use alcohol as a way to cope with your problems, (f) you made a terrible judgement by going UA to attend to your spouse, (g) you have actively engaged in rehabilitation efforts, focusing on both your mental health and personal development, (g) you became a veteran service representative helping veterans to get the help they need, (h) you have dedicated your life to serving others by spending time at outreach centers for the homeless and doing ministry work. For purposes of clemency and equity consideration, the Board noted you did submitted character letters of support, an individual statement, and documents from your military record.

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

The Petitioner was appropriately referred for psychological evaluation during his enlistment and properly evaluated on multiple occasions, including during an inpatient hospitalization. His personality, adjustment, and depressive disorder diagnoses were based on observed behaviors and performance during his period of service, the information he chose to disclose, and the psychological evaluations performed by the mental health clinician. It is plausible that his misconduct could be considered behavioral indicators of irritability and avoidance consistent with his diagnosed personality and other disorders.

The AO concluded, "it is my clinical opinion there is in-service evidence of diagnoses mental health conditions that may be attributed to military service. There is 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 found that your conduct showed a complete disregard for military authority and regulations. Further, the Board concluded there are inconsistencies with your narrative history and insufficient information to support your contentions. Therefore, while the Board considered the AO, it determined the mitigation evidence from your mental health condition was inadequate to overcome your extensive record of 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 rehabilitation, 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,

7/10/2024

