



**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. 1746-24  
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 Board waived the statute of limitation 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 13 September 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, and applicable statutes, regulations, and policies, to include to 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). The Board also considered the advisory opinion (AO) of a qualified mental health provider, which was previously provided to you. Although you were afforded an opportunity to submit a rebuttal, you chose not to do so.

You enlisted in the Navy and began a period of active duty on 7 June 1989. On 25 November 1991, you were subject to nonjudicial punishment (NJP) for violations of the Uniform Code of Military Justice (UCMJ) to include Article 92, for dereliction of duty, and Article 107, for making a false official statement with respect to the circumstances related to your duty. In addition to the punishment you received, a majority of which was suspended, you were counseled that you were being retained in spite of your misconduct but were warned that further misconduct could result in separation under adverse circumstances.

The following year, you were the suspect in a criminal inquiry conducted by Naval Investigative Services (NIS) into allegations related to the theft of other service member's checks and your alleged fraudulent use of their signatures on those checks. While this investigation was pending, you received a second NJP for violations of Articles 89 and 91 of the UCMJ due to disrespect toward a commissioned officer and insubordinate conduct toward the same, respectively. After completion of the NIS investigation into your alleged misconduct, the charges against you were recommended for processing for administrative separation rather than trial by court-martial and you were notified of such processing for the bases of pattern of misconduct and commission of a serious offense. You acknowledged this notification and elected to waive your rights incident to such processing. Your command forwarded a recommendation for your discharge under Other Than Honorable (OTH) conditions based on their opinion that you were an "admitted thief and forger." Your discharge was approved for the primary basis of commission of a serious offense and you were so discharged on 1 February 1993.

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 you developed mental health issues during your military service from which you have suffered symptoms for over 30 years since your discharge, you face prejudice due to your discharge, you were never treated for post-traumatic stress disorder (PTSD) or other health issues because you did not have the funds to be properly evaluated, and your discharge is unjust due to the contributing factor of your unspecified mental health condition. For the purpose of clemency and equity consideration, you submitted five character letters.

Because you also contend that PTSD or another mental health condition affected the circumstances of the misconduct which resulted in your discharge, the Board also considered the AO. The AO stated in pertinent part:

There is no evidence that the Petitioner was diagnosed with a mental health condition while in military service, or that he exhibited any symptoms of a mental health condition. Furthermore, larceny, falsely uttering checks and making a false official statement are particularly inconsistent with PTSD symptoms. His statement is not sufficiently detailed to provide a nexus with his misconduct. Additional records (e.g., mental health records describing the Petitioner's diagnosis, symptoms, and their specific link to his misconduct) would aid in rendering an alternate opinion.

The AO concluded, "it is my considered clinical opinion there is insufficient evidence of a mental health condition that may be attributed to military service. There is insufficient evidence that his misconduct could be attributed 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 and NIS investigation results, 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. Additionally, the Board concurred with this AO regarding not only the lack of substantiating evidence but also the observation that the nature of the majority of your offenses, and certainly the most serious of those, are not the

sort which are normally attributable to a mental health condition due to the specific intent associated with larceny and false statements. Further, the Board noted you argued that your reputation is tarnished based on the “allegations” of one person. However, the Board observed in the NIS investigative report that you admitted to taking and cashing two personal checks of another service member. Therefore, the Board concluded you have yet to accept responsibility for your theft related misconduct. Finally, the Board found that your offenses were substantially more serious and, more likely than not, financially damaging to the victims involved, than the comparative positive observations made regarding your post-service conduct and character.

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 is attached 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,

10/10/2024

