



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

█  
Docket No. 2743-24  
Ref: Signature Date

█  
█  
█  
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 23 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 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). The Board also considered the advisory opinion (AO) furnished by a qualified mental health professional. Although you were provided an opportunity to respond to the AO, you chose not to do so.

You enlisted in the Navy and commenced active duty on 24 August 1992. On 9 January 1993, you received non-judicial punishment (NJP) for failure to obey an order to turn in your liberty card and to complete the required amount of after-hours study hours.

On 17 May 1993, you were charged with making or uttering a worthless check. Shortly thereafter, on 23 May 1993, you were absent from your appointed place of duty without authorization, and on 10 June 1993, you commenced a period of unauthorized absence (UA) ended by apprehension on 15 June 1993. The following day, on 16 June 1993, you again

commenced UA that ended by apprehension on 17 July 1993. During this UA, you missed ship's movement. You missed ship's movement for a second time while UA on 18 July 1993.

You were subsequently charged with dereliction of duty and assault. On 6 August 1993, you received NJP for these offenses, in addition to UA, missing ship's movement, willful disobedience of a superior commissioned officer, and making or uttering a worthless check.

On 26 August 1993, the separation authority directed your discharge for Misconduct, commission of a serious offense, with an Other Than Honorable Conditions (OTH) characterization of service.

Unfortunately, additional 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. Based on the information contained on your Certificate of Release or Discharge from Active Duty (DD Form 214), you were separated on 30 August 1993 with an "Under Other Than Honorable Conditions (OTH)" characterization of service, your narrative reason for separation is "Misconduct," your reentry code is "RE-4," and your separation code is "HKQ," which corresponds to misconduct – serious offense.

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 to upgrade your characterization of service and your contentions that you suffer from Bi-Polar Affective Syndrome and were misdiagnosed during service, are currently deemed disabled for Social Security benefits, and did not previously know you could apply for a discharge upgrade. You believe that if the Navy's mental health program in 1993 was what it is now, you would have received the help you need sooner. For purposes of clemency and equity consideration, the Board considered the evidence you provided in support of your application including the list of hospitals and clinics from which you've received treatment since discharge, and the letter from ██████████ Clinic Behavioral Health.

As part of the Board's review process, a qualified mental health professional reviewed your contentions and the available records and issued an AO dated 31 July 2024. The AO noted in pertinent part:

Petitioner was properly evaluated during military service, and it was determined that he had a preservice diagnosis of Major Depressive Disorder that was not disclosed during his pre-enlistment physical. It was also determined that his mental health concerns were not exacerbated by military service. Post-service, he has received diagnosis and treatment of Bipolar Disorder. It is reasonable that his diagnosis may have changed with the passage of time. Major Depressive Disorder and Bipolar Disorder are both mood disorders and are differentiated by the presence or absence of periods of symptoms of mania. Thus, following the observation of at least one period of mania, the Petitioner's diagnosis would be modified. While disobedience could be conceptualized as a symptom of irritability associated with

a mood disorder, it is difficult to attribute his financial mismanagement to a mental health condition given his in-service evaluation. 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 mental health condition that may be attributed to military service. There is insufficient evidence to attribute all of his misconduct to a mental health condition."

After thorough review, the Board concluded your 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 likely negative impact your repeated misconduct had on the good order and discipline of your command. The Board additionally noted that you were given opportunities to address your conduct issues but you continued to commit misconduct, which ultimately led to your OTH characterization of service. Additionally, the Board concurred with the AO and determined that there is insufficient evidence of a diagnosis of a mental health condition that may be attributed to military service, and there is insufficient evidence that your misconduct could be attributed to a mental health condition. As the AO noted, you were properly evaluated during military service and it was determined you had a preservice diagnosis of Major Depressive Disorder that you did not disclose during your pre-enlistment physical. It was additionally determined that these mental health concerns were not exacerbated by your service. Lastly, although post-service you received a diagnosis and treatment for Bipolar Disorder, it is difficult to attribute your misconduct related to financial mismanagement to a mental health condition. The Board further agreed that additional records, as detailed above, would aid in rendering an alternate opinion.

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, 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,

10/11/2024

