



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

██████████
Docket No. 2793-24
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 30 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 and your response to the AO. Although you were provided an opportunity to respond to the AO, you chose not to do so.

The Board determined that your personal appearance, with or without counsel, would not materially add to their understanding of the issues 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 commenced active duty on 22 August 1997. On 6 May 1998, you received non-judicial punishment (NJP) for unauthorized absence (UA) for failure to go at the prescribed time to your appointed place of duty to include mandatory extra studies, and an appointment with the command chaplain. Additionally, you were issued an administrative

remarks (Page 13) counseling concerning deficiencies in your performance and/or conduct. You were advised that any further deficiencies in your performance and/or conduct may result in disciplinary action and in processing for administrative discharge.

On 28 August 1998, you commenced a period of UA ended by your surrender on 31 August 1998. You commenced a second period of UA on 4 September 1998, also ended by surrender, on 1 October 1998. You subsequently received NJP for these infractions on 5 November 1998.

Shortly thereafter, on 25 November 1998, you again received NJP, on this occasion for dereliction in the performance of your duties and false official statement.

On both 24 December 1998, and 12 March 1999, you were again issued Page 13's for UA. Despite this, on 18 March 1999, you received a fourth NJP for three occurrences of UA, and on 30 April 1999, you received a fifth NJP for UA—failure to go to your appointed place of duty, and orders violations for failing to shave, playing cards, sleeping, and going into an unauthorized area, while on restriction.

On 25 October 1999, you commenced a period of UA ended by your surrender on 29 October 1999, and on 11 December 1999, you commenced a period of UA, also ended by your surrender, on 15 December 1999. On 7 March 2000, you received NJP for the sixth time, for four occasions of UA, and false official statement.

Consequently, you were notified of administrative separation processing for misconduct—commission of a serious offense with Under Other Than Honorable conditions (OTH) as the least favorable characterization of service. After you waived your associated rights, your commanding officer recommended your discharge with an OTH. Ultimately, you were so discharged on 27 April 2000.

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 received your discharge due to being late on multiple occasions, during that time you had several personal issues you were struggling with and you were unable to receive assistance from your command, you did not have the life experience to know how to deal with those issues and still perform your duties, your work suffered and your personal issues got worse without guidance from your leadership, these factors ultimately led to your Captain's Mast and discharge, and that since discharge, you have made it a point to learn time and stress management skills, and have striven to be early to work and appointments every day. For purposes of clemency and equity consideration, the Board considered the evidence you provided in support of your application including your certificate as a Clinical Laboratory Phlebotomist, your █ and █ licenses to sell insurance, your Career Point College transcript, and your personal assertion.

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 11 August 2024. The AO noted 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. His statement is not sufficiently detailed to provide a nexus with his misconduct. He did not submit any medical evidence in support of his claim. 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 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 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 and absences 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, there is no evidence that you were diagnosed with a mental health condition in service or that you exhibited any symptoms of a mental health condition. The Board further agreed that your statement was not sufficiently detailed to provide a nexus with your misconduct, and that you did not provide any medical evidence to support your claim. Lastly, the Board agreed that additional records, as detailed above, would aid in rendering an alternate opinion. Therefore, the Board determined that the evidence of record did not demonstrate that you were not mentally responsible for your conduct or that you should not be held accountable for your actions.

As a result, the Board concluded significant negative aspects of your service outweigh the positive aspects 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 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,

10/24/2024

