



**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. 3412-24  
Ref: Signature Date

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Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to 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. 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 30 December 1976. After a period of continuous Honorable service, you immediately reenlisted on 21 January 1977. You were Honorably discharged on 10 February 1977 and reenlisted for a third period of service on 21 October 1977. You were again Honorably discharged, and on 24 May 1979, you reenlisted for a fourth period of service. After another period of continuous Honorable service, you were discharged, followed by immediate reenlistment on 25 March 1983.

On 8 December 1983, you received non-judicial punishment (NJP) for disobeying a lawful order to stop using prior drug prescriptions and being disruptive. You were also found to have self-injured for the purpose of avoiding service, and to have breached the peace by becoming so violent you had to be restrained. 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 10 December 1983, you were medically evaluated following your self-report of having intentionally consumed 12 tablets containing a barbiturate. You denied wanting to die, but admitted to objecting to the specific military mission of your ship, and told the doctor you had no current interest in military service whatsoever. The doctor noted that you were moderately depressed, in addition to being angry and frustrated. The doctor also noted you indicated you were aware that counseling was available to you through the medical department.

Shortly thereafter, on 12 December 1983, you received a second NJP for unauthorized absence (UA) from your place of duty by failing to go to muster on two occasions, failing to go to extra duty checkout with the Master at Arms on three occasions, and failing to obey a lawful order.

You again received NJP, on 6 January 1984, for showing disrespect towards a superior petty officer, and again failing to obey a lawful order, by smoking in your rack.

Consequently, you were notified of administrative separation processing for pattern of misconduct. After you waived your associated rights, your commanding officer recommended your discharge with an Other Than Honorable (OTH) characterization of service. Ultimately, you were discharged with an OTH on 8 February 1984.

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 change your narrative reason for separation. You contend that you suffered from PTSD and other mental health conditions incurred during your naval service, and that such mental health conditions mitigate and outweigh your negative discharge. You further contend that your service in the Navy, and post-service conduct, weigh in favor of recharacterizing your service. For purposes of clemency and equity consideration, the Board considered the evidence you provided in support of your application including your legal brief with exhibits and advocacy letters.

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 4 June 2024. The AO noted in pertinent part:

The Petitioner submitted two character references in support of his claim. There is evidence that the Petitioner complained of depression, but then demonstrated behavior that was inconsistent with a formal diagnosis of depression. He did not submit any medical evidence in support of his claim. 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 your potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your NJPs in your final enlistment, 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 noted that you were given opportunities to address your conduct issues but you continued to commit misconduct, which ultimately led to your unfavorable 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, although there is evidence that you complained of depression, you then demonstrated behavior inconsistent with a formal diagnosis of depression. You also did not provide any medical evidence in support of your claim. The Board further agreed that your statement was not sufficiently detailed to provide a nexus with your misconduct. 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 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 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

