

## **DEPARTMENT OF THE NAVY**

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

> Docket No. 3488-24 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 2 October 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 (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 afforded an opportunity to submit an AO rebuttal, you chose not to do so.

You enlisted in the Navy and began a period of active duty on 20 June 1988. On 17 January 1989, you were issued and administrative remarks (Page 13) retention warning formally counseling you concerning deficiencies in your performance and conduct; specifically, violation of Article 86 and Article 92. The Page 13 expressly warned you that any further deficiencies in your performance and/or conduct may result in disciplinary action and in processing for administrative separation. On 17 February 1990, you received non-judicial punishment (NJP) for making, drawing, or uttering a check, draft or order without sufficient funds. Consequently, you were notified that you were being recommended for administrative discharge from the Navy by reason of misconduct due to commission of a serious offense. You waived your procedural

right to consult with counsel and to present your case to an administrative discharge board. The commanding officer (CO) forwarded your administrative separation package to the separation authority recommending your administrative discharge from the Navy with an Other Than Honorable (OTH) characterization of service. As part of the CO's recommendation, he stated in pertinent part:

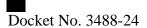
[Petitioner] has proven to be non-productive and an administrative burden. He is a detriment to morale, and blatantly, with criminal intent uttered approximately \$2000.00 in bad checks. NJP was conducted for the amount of \$1250 of fraudulent checks drawn at the Navy Exchange, of the Following NJP, the command received notice of \$675 additional in fraudulent checks. Additionally, [Petitioner] has approximately \$4000 in outstanding visa bills. He has failed to pay these commitments and has incurred over \$6500 in insurance bills resulting from auto accidents. [Petitioner] drew the checks with full knowledge of insufficient funds. His casual attitude towards the NJP violations and irresponsible financial behavior are totally unacceptable and warrant an other than honorable discharge.

The separation authority directed your OTH discharge from the Navy by reason of misconduct due to commission of a serious offense and, on 17 March 1990, you were so discharged.

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 discharge character of service to allow you to utilize your medical care benefits from the Department of Veterans Affairs. The Board considered your contentions that: (1) you have had Tourette Syndrome your entire life and you were not diagnosed until "roughly 2004/2005," (2) during your deployment you developed a negative relationship with your Command Master Chief (CMC) and Division Officer (DIVO), (3) you requested a transfer, but your request was unsuccessful, this added to the animosity between yourself and your superiors creating a certainty of failure for your military career, and (4) the stress from the situation was palpable and you were not mentally capable of handling the situation. For purposes of clemency and equity consideration, the Board considered the documentation you provided in support of your application.

As part of the Board's review, a qualified mental health professional reviewed your contentions and the available records and provided the Board with an AO on 14 August 2024. The AO stated in pertinent part:

There is no evidence that he was diagnosed with a mental health condition in military service, or that he exhibited any psychological symptoms or behavioral changes indicative of a diagnosable mental health condition. Temporally remote to his military service, he has received a diagnosis of Tourette's Disorder, which is a condition comprising motor and vocal tics. While it is probable that he may have experienced vocal or motor tics during military service, they do not appear to have been sufficiently impairing as to require intervention or even notation in his service medical record. It is also difficult to consider how financial mismanagement would



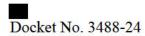
be attributed to a tic disorder. Additional records (e.g., post-service mental health records describing the Petitioner's diagnosis, symptoms, and their specific link to his misconduct) may aid in rendering an alternate opinion.

The AO concluded, "it is my clinical opinion there is insufficient evidence to attribute his mental health condition to military service. There is insufficient evidence to attribute 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 NJP and counseling, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and concluded your misconduct showed a complete disregard for military authority and regulations. The Board also considered the negative impact your conduct likely had on the good order and discipline of your command. Further, the Board concurred with the AO that there is insufficient evidence to attribute your mental health condition to military service and there is insufficient evidence to attribute your misconduct to a mental health condition. As the AO explained, while it is probable that you may have experienced vocal or motor tics during military service, they do not appear to have been sufficiently impairing as to require intervention or even notation in your service medical record and it is difficult to consider how financial mismanagement would be attributed to a tic disorder. Furthermore, the Board determined your diagnosis of Tourette's Disorder is too temporally remote from your military service. 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 otherwise not be held accountable for your actions. Finally, absent a material error or injustice, the Board declined to summarily upgrade a discharge solely for the purpose of facilitating veterans' benefits or enhancing educational or employment opportunities.

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 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,

10/23/2024