



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. 4089-24
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 7 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 (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.

You enlisted in the Naval Reserve and commenced active a period of active service on 4 September 1990. On 5 November 1992, you received non-judicial punishment (NJP) for unauthorized absence (UA) from your appointed place of duty, larceny of personal property of a value of \$300, and possession of an unauthorized military ID card. 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. Despite this, on 30 November 1992, you received NJP for failure to obey a lawful order and, on 6 April 1993, you received NJP for UA and dereliction of duty.

Consequently, you were notified of administrative separation processing for pattern of misconduct and commission of a serious offense with Other Than Honorable Conditions (OTH) as the least favorable characterization of service. After you waived your associated rights to consult with counsel and request an administrative discharge board, your commanding officer recommended your discharge with an OTH. The separation authority concurred with this recommendation, and you were so discharged on 25 May 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 to upgrade your characterization of service and change your narrative reason for separation to Secretarial Authority, with corresponding change to your separation code. You contend that the Navy made a material error by separating you with an OTH when your chain of command erred in its discretionary powers by failing to address the systematic failures that led to your unjust treatment and subsequent discharge. You believe from the outset of your enlistment, discrepancies in recruitment information, coupled with misguided decisions and inadequate support, created a hostile environment that culminated in grave injustice, and that the command not only disregarded your commendable service record, but also failed to consider the significant impact of your mental health condition, which was exacerbated by your service, particularly due to extreme bullying and harassment by two Petty Officers. 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.

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 21 August 2024. The AO noted in pertinent part:

Petitioner was appropriately referred for psychological evaluation during his enlistment and properly evaluated on multiple occasions. His personality disorder diagnosis was based on observed behaviors and performance during his period of service, the information he chose to disclose, and the psychological evaluations performed by the mental health clinician. A personality disorder diagnosis is pre-existing to military service by definition, and indicates lifelong characterological traits unsuitable for military service, since they are not typically amenable to treatment within the operational requirements of Naval Service. Unfortunately, the Petitioner has provided no medical evidence of another mental health condition. Although some of his misconduct may be considered behavioral indicators of his characterological difficulties, it is difficult to attribute his misconduct solely to a mental health condition, given his statement that he was unjustly prosecuted for events outside of his control. 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 his misconduct solely to a character disorder.”

In response to the AO, you provided additional arguments in support of your application. After review of this rebuttal evidence, the AO remained unchanged.

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 seriousness of your misconduct and 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 OTH characterization of service. Additionally, the Board concurred with the AO and determined that there is insufficient evidence of a mental health condition that may be attributed to military service, and there is insufficient evidence to attribute your misconduct solely to a character disorder. As the AO noted, you provided no medical evidence of a mental health condition apart from a personality disorder, and although some of your misconduct may be considered behavioral indicators of this disorder, it is difficult to attribute your misconduct solely to a mental health condition, given your statement that you were unjustly prosecuted for events outside of your control. Lastly, the Board agreed additional records, as detailed above, would aid in rendering an alternate opinion.

Finally, the Board was not persuaded by your arguments that the Navy or your chain of command committed any error or perpetuated an injustice with your administrative separation. 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,

10/30/2024

