



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

██████████  
Docket No. 4702-24  
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 your application was not filed in a timely manner, the Board found it in the interest of justice to waive the statute of limitations and consider your case on its merits. A three-member panel of the Board, sitting in executive session, considered your application on 12 December 2024. The names and votes of the members of the panel 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 25 July 2018 guidance from the Under Secretary of Defense for Personnel and Readiness (USD (P&R)) regarding equity, injustice, or clemency determinations (Wilkie Memo) and the 4 April 2024<sup>1</sup> clarifying guidance from the USD (P&R) regarding cases involving both liberal consideration discharge relief requests and fitness determinations (Vazirani Memo). The Board also considered the 30 October 2024 Advisory Opinion (AO) from a licensed medical professional, which was considered unfavorable to your request. Although you were afforded an opportunity to submit a rebuttal, you did not do so.

A review of your record shows you enlisted in the Navy and commenced active duty on 5 July 1988. During your service, from time to time, your mental health was evaluated, as described more fully in the 30 October 2024 AO. On 11 March 1993, nonjudicial punishment (NJP)<sup>2</sup> was imposed due to failure to obey an order/regulation, absence without leave, and failing to pay a

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<sup>1</sup> Provided to you on 26 June 2024 for your review and submission of further statements or additional documentary material. No response received.

<sup>2</sup> You were reduced in rate to E-2 (suspended) and awarded 30 days of extra duty. On 23 March 1993, your suspended reduction in rate was vacated.

just debt. On 8 April 1993, you received NJP<sup>3</sup> for two instances of unauthorized absence, willfully disobeying a superior commissioned officer, and failure to obey an order/regulation.

On 13 April 1993, the Mental Health Department informed your commanding officer (CO) you had been diagnosed with severe, longstanding Personality Disorder with Passive-Aggressive Traits which existed prior to enlistment and was of such a severity as to render you incapable of serving adequately in the U.S. Navy.

On 21 April 1993, a third NJP<sup>4</sup> was imposed after you willfully disobeyed a superior commissioned officer. You were notified on 26 April 1993 of pending administrative separation by reason of misconduct due to pattern of misconduct; waived your rights, except to obtain copies; and did not object to separation. Your 11 May 1993 separation physical examination by psychiatry found you fit for duty but recommended administrative separation. On 12 May 1993, CO, ██████████, recommended your separation by reason of misconduct due to pattern of misconduct, stating you were an administrative burden to the command and due to your substandard performance, were incapable of meeting the Navy's standards. On 1 July 1993, the Separation Authority directed your discharge with an other than honorable (OTH) characterization of service by reason of misconduct due to pattern of misconduct and assigned a RE-4 (not recommended for reenlistment) reentry code. On 13 July 1993, you were so discharged.

In your petition, you contend your OTH discharge and rate are in error. You contend the doctor provided false, contradictory information that, if he found it true, should have led to your discharge "under general medical." In your e-mail of 10 July 2024, you stated, "the whole thing about the shrink stating [you] supposedly had multiple personalities" and the fact he stated you "should never have been allowed into the Navy" but then returned you to the fleet without discharging you "under honorable medical" is preposterous.

The Board carefully considered all potentially mitigating factors to determine whether the interests of justice warrant relief in your case in accordance with the Wilkie memo. For purposes of clemency and equity consideration, the Board considered the totality of the evidence you provided in support of your application. Further, in accordance with the Vazirani memo, the Board first applied liberal consideration to your contention your OTH discharge was in error/unjust to determine whether discharge relief is appropriate. After making that determination, the Board then separately assessed your implied claim of medical unfitness, without applying liberal consideration to the unfitness claim or carryover of any of the findings made when applying liberal consideration.

Additionally, a physician advisor reviewed your contentions and the available records and issued an AO dated 30 October 2024. The AO noted that during your military service, you did not receive a diagnosis of any unfitting condition which would have warranted referral to the Disability Evaluation System (DES), specifically commenting that your Personality Disorder diagnosis was not an unfitting condition. The AO further noted that although you were recommended for administrative separation for unsuitability due to your Personality Disorder,

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<sup>3</sup> You were reduced in rate to E-1 (suspended) and awarded forfeiture of pay and 15 days extra duty. On 19 April 1993, your suspended reduction in rate was vacated, making you an E-1.

<sup>4</sup> You were awarded 30 days of restriction and 40 days extra duty.

you were administratively processed for misconduct and there is no evidence your diagnosis mitigated your misconduct. After a review of all available objective clinical and non-clinical evidence, the physician advisor determined that at the time of your discharge, you did not suffer from any medical or mental health conditions that prevented you from reasonably performing the duties of your office, grade, rank, or rating. The AO concluded there was insufficient evidence to attribute your in-service misconduct to a mental health condition.

The Board carefully reviewed your petition and the material you provided in support of your petition, and, relying on the AO, disagreed with your rationale for relief. In reaching its decision, the Board observed that, in order to qualify for military disability benefits through the DES with a finding of unfitness, a service member must be unable to perform the duties of his/her office, grade, rank or rating as a result of a qualifying disability condition. Alternatively, a member may be found unfit if his/her disability represents a decided medical risk to the health or the member or to the welfare or safety of other members; the member's disability imposes unreasonable requirements on the military to maintain or protect the member; or the member possesses two or more disability conditions which have an overall effect of causing unfitness even though, standing alone, are not separately unfitting.

In reviewing your record, the Board concluded the preponderance of the evidence does not support a finding you met the criteria for unfitness as defined within the DES at the time of your discharge. In particular, the Board observed you failed to provide evidence you had any unfitting condition within the meaning of the DES. Applying a presumption of regularity, the Board determined that if you actually had a medical condition, including a mental health condition, under circumstances that warranted your referral to a medical board, you would have been so referred. You were, in fact, found to be fit for separation during your psychiatric separation physical examination. Additionally, the Board determined there was insufficient evidence of an error or injustice in your administrative separation processing by reason of misconduct due to a pattern of misconduct. Further, the Board found no error or injustice in the imposition of the three NJPs and concluded you were appropriately reduced in rate to E-1 by your CO. Accordingly, given the totality of the circumstances and view of all of the foregoing, 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,

1/17/2025

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