



**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. 4944-24  
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 16 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 4 February 1986. On 19 February 1986, you were issued an administrative remarks (Page 13) counseling warning concerning deficiencies in your performance and/or conduct. Specifically, failure of the academic phase of training as evidenced by failing test one. On 20 February 1986, you were issued a second Page 13 counseling warning concerning your academic test failure. On 4 March 1986, you were issued a third Page 13 counseling warning concerning your academic test failure. On 8 March 1986, you were formally counseled concerning your failure to improve the deficiencies in your performance and/or conduct as evidenced by your failure of literal comprehension three times.

Consequently, you were notified that you were being recommended for administrative discharge from the Navy by reason of entry level performance and conduct as evidenced by repeated academic failure. You waived your right to consult with military counsel. The separation authority stated in pertinent part:

[Petitioner] has clearly demonstrated his incapability for further naval service as evidenced by his repeated academic failure. It is evident that he does not have the ability and/or determination to satisfactorily complete the required course of instruction prior to transfer to the fleet.

Ultimately, the separation authority directed your Uncharacterized Entry Level Separation from the Navy by reason of entry level performance and/or conduct and, on 2 April 1986, 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 and contention that you were unable to complete your performance due to depression and anxiety that was not diagnosed at the time and have since been diagnosed. 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 28 August 2024. The AO stated in pertinent part:

There is evidence that the Petitioner experienced a mental health concern during military service. Post-service, the Department of Veterans Affairs (VA) has granted service connection for a mental health condition. Unfortunately, there is insufficient evidence that the Petitioner's poor academic performance was related to his mental health symptoms. Descriptions of his academic difficulties suggest cognitive function difficulties, rather than emotional impediments to academic achievement. 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 in-service and post-service evidence by the VA of a mental health condition that may be attributed to military service. There is insufficient evidence to attribute the circumstances of his separation from service 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 assigned uncharacterized entry-level separation remains appropriate. Applicable regulations authorize an uncharacterized entry-level separation if the processing of an individual's separation begins within 180 days of the individual's entry on active service, as in your case. While there are exceptions to policy in cases

involving misconduct or extraordinary performance, the Board determined neither exception applies in your case. Further, the Board concurred with the AO that, while there is in-service and post-service evidence by the VA of a mental health condition that may be attributed to military service, there is insufficient evidence to attribute the circumstances of your separation from service to a mental health condition. As the AO explained, there is insufficient evidence that your poor academic performance was related to your mental health symptoms. Descriptions of your academic difficulties suggest cognitive function difficulties, rather than emotional impediments to academic achievement.

As a result, 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. 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,

11/6/2024

