



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

[REDACTED]
Docket No. 5502-24
Ref: Signature Date

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to Title 10, United States Code, Section 1552. 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 Board waived the statute of limitation 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 13 December 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 the 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 to 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) of a qualified mental health provider and your response to the AO.

You enlisted in the Navy and began a period of active duty on 3 October 1990. Upon your entry, you were issued administrative counseling advising you that you were being retained in spite of fraudulent entry due to your failure to disclose civil involvement of driving an uninsured and unregistered vehicle. You reported for duty aboard the [REDACTED] on 18 March 1991.

In both May and June 1991, you submitted statements for having lost your military identification card, reportedly due to acts of crime against you. On 8 July 1992, you were issued administrative counseling for failure to properly perform your duties as a postal clerk and for failure to maintain control of official mail. You were then subject to nonjudicial punishment (NJP), on 9 April 1993, for forgery and dereliction in the performance of duty. You submitted a third statement in June of 1993 regarding another lost identification card; again due to purportedly being a victim of theft. On 23 June 1993, you received a mental health evaluation for reported depression and suicidal feelings. Specifically, this evaluation stated, "...member is not considered mentally ill, but manifests a character & behavior of such severity as to render him incapable of serving adequately in the Navy ... he is judged to represent a continuing danger to self or others if retained in the Navy. He is deemed fit for return to duty, unsuitable for retention." You were diagnosed as having a Personality Disorder (PD), not otherwise specified, with antisocial, passive aggressive, and borderline features; all existing prior to your entry to active duty. It was recommended that you should be immediately processed for separation.

On 29 June 1993, you were notified of processing for administrative separation by reason of misconduct due to commission of a serious offense and convenience of the government for your PD. You elected to waive your right to a hearing before an administrative separation board and the recommendation for your discharge under Other Than Honorable (OTH) conditions was forwarded for review and decision. Your discharge was approved for the primary reasons of commission of a serious offense and you were discharged on 9 July 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 Wilkie, Kurta, and Hagel Memos. These included, but were not limited to, your desire to upgrade your discharge to "Honorable" and change your narrative reason for separation to "Secretarial Authority" with an associated change to your separation code. You contend that your mental health was impacted during your military service due to family stressors and your NJP for forgery; which you stated caused you to feel isolation and a loss of esteem. You also claim that you deployed overseas in support of Operations ██████████ and ██████████, and that you experienced suicidal thoughts after returning from this deployment. With respect to your NJP offense, you assert that you faced considerable challenges due to a strained relationship with your department chief due to his poor leadership and domineering demeanor; which caused you to feel marginalized and unsupported. You purport to have felt "compelled to resort to desperate measures" as a result of necessity rather than malice, to include forging his signature on maintenance tags for fire safety equipment. You further believe that your service record and post-service character, for which you submitted a résumé and diplomas, support relief. You argue that it was a substantial material error for the Command to exercise discretionary authority in a manner that disregarded your "commendable service record," thereby dismissing you for misconduct rather than attempting to rehabilitate you. You also contend an error and injustice exists due to the command failing to acknowledge the impact of your contended mental health conditions.

Because you contend, in part, that a mental health condition affected your discharge, the Board also considered the AO. The AO stated in pertinent part:

Petitioner was appropriately referred for psychological evaluation during his enlistment and properly evaluated during an inpatient hospitalization. His

personality disorder diagnosis was based on observed behaviors and performance during his period of service, the information he chose to disclose to the mental health clinician, and the psychological evaluation 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, he has provided no medical evidence to support his claims. His in-service misconduct appears to be consistent with his diagnosed personality disorder, rather than evidence of depression or another mental health condition incurred in or exacerbated by military service.

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.”

In response to the AO, you submitted rebuttal evidence that provided additional arguments in support of your case. After reviewing your rebuttal evidence, the AO remained unchanged.

After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your NJP, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and found that your conduct showed a complete disregard for military authority and regulations. Additionally, the Board concurred with the clinical conclusion that there is insufficient evidence of a mental health condition that may be attributed to military service and insufficient evidence that your misconduct could be attributed to a mental health condition. In fact, the Board observed that you acknowledge having intentionally forged your chief’s signature due to his allegedly domineering and oppressive leadership style. 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.

With respect to your “commendable” service record, the Board noted that you began your active duty period in spite of a fraudulent enlistment, were counseled for failure to maintain control of official mail and failure to properly perform your duties, received NJP not only for forgery but dereliction of duty, and managed to lose your military identification card on three separate occasions in just over two years¹. Therefore, the Board was not persuaded by your arguments regarding your commendable service.

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

¹ Purportedly due to being a victim of theft or crime on each occasion.

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 the 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 is attached 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,

1/12/2025

