



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

██████████  
Docket No. 5973-24  
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 18 November 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, 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)/mental health condition (MHC) (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 Reserves and commenced a period of active duty on 14 June 1994. You received an Honorable (HON) discharge on 16 May 1996. You immediately reenlisted and began a second period of active duty<sup>1</sup>.

In 2005, you pleaded guilty to, and were convicted of, incest and sexual assault on a child in the District Court of ██████████. You were sentenced to four to ten years confinement, and sex offender registration. Consequently, on 9 May 2005, you were notified of pending

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<sup>1</sup> The Board noted your two DD Forms 214 annotated inconsistent discharge and active duty start dates. However, for the purpose of adjudicating your requests, the Board found that you Honorably completed your first enlistment.

administrative separation processing by reason of misconduct due to commission of a serious offense and civil conviction. You waived your rights to consult with legal counsel and request an administrative discharge board, and, on 15 July 2005, you were discharged Under Other Than Honorable Conditions (OTH).

Post-discharge, you applied to the Naval Discharge Review Board (NDRB) for a discharge upgrade. You contended your misconduct was not service related and your service was unblemished. The NDRB denied your request for an upgrade, on 19 July 2007, based on their determination that your discharge was proper as issued.

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 characterization of service and change your narrative reason for separation to Secretarial Authority. You contend that you experienced traumatic events during service leading to PTSD that mitigates your misconduct including witnessing a helicopter crash, the death of two enlisted crew members friends, and witnessing two Sailors shut within a compartment to fight the fire, after which you heard their screams while they suffered. After a working a year as a civilian, you became depressed and, thinking it was because you missed the Navy, you decided to reenlist. Once back on duty, you fell more deeply into depression, and during training in ██████████, you started drinking heavily—to feel numb. Ultimately, you contend the failure of the Navy to properly diagnose and address your mental health issues during service constituted a material error that warrants reevaluation of his discharge status. For purposes of clemency and equity consideration, the Board considered the evidence you provided, 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 2 October 2024. The AO noted in pertinent part:

There is no evidence that the Petitioner was diagnosed with a mental health condition while in military service, or that he exhibited any symptoms of a mental health condition. Possibly, he was suffering from a mood disorder as per the psychological evaluation conducted in 2005. However, the nature and severity of his misconduct cannot be explained or mitigated by a mental health condition. He was not found to exhibit any psychopathy, and thus he was aware of his actions and behaviors at the time. His statement is not sufficiently detailed to provide a nexus with his misconduct. Additional records (e.g., mental health records describing the Petitioner’s diagnosis, symptoms, and their specific link to his misconduct) would aid in rendering an alternate opinion.

The AO concluded, “it is my considered clinical opinion there is sufficient evidence of a post-service mental health condition that may be attributed to military service. There is insufficient evidence that his misconduct could be attributed to any mental health condition.”

In response to the AO, you submitted additional supporting documentation that provided additional clarification of the circumstances of your case. After reviewing your 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 civil conviction, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact that it involved a sexual crime against a minor. The Board further considered the likely discrediting effect your conviction had on the Navy. Additionally, the Board agreed with the AO that regardless of your post-service diagnosis, the nature and severity of your misconduct cannot be explained or mitigated by a mental health condition. Rather, you were not found to exhibit any psychopathy in service, and thus the Board concludes, as indicated by the AO, that you were aware of your actions and behaviors at the time of your offenses. 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. Ultimately, the Board not persuaded by your arguments that the Navy was in some way responsible for your decision to sexually assault a child through an act of incest.

As a result, the Board concluded significant negative aspects of your service outweigh the positive aspects 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 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,

12/17/2024

