



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

█  
Docket No. 5840-24  
Ref: Signature Date

█  
█  
█  
█  
█

Dear █

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 11 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 determined that your personal appearance, with or without counsel, would not materially add to their understanding of the issues involved. Therefore, the Board determined that a personal appearance was not necessary and considered your case based on the evidence of record.

You enlisted in the U.S. Navy and began a period of active duty service on 4 August 2000. Your enlistment physical examination, on 3 April 2000, and self-reported medical history both noted

no neurologic or psychiatric conditions or symptoms, or counseling. On 13 March 2001, you reported for duty on board the ██████████ (██████████) in ██████████, ██████████.

On 25 April 2001, you received non-judicial punishment (NJP) for: (a) aiding and abetting the larceny of personal property, (b) larceny, and (c) communicating a threat. You did not appeal your NJP. On 26 April 2001, your command issued you a “Page 13” retention warning (Page 13) documenting your NJP. The Page 13 advised you that any further deficiencies in your performance and/or conduct may result in disciplinary action and in processing for an administrative discharge. You elected not to submit a Page 13 rebuttal statement. On 20 August 2001, you commenced an unauthorized absence (UA) that terminated on 21 August 2001.

On 26 March 2003, you received NJP for insubordinate conduct. On 7 June 2003, you commenced a period of UA that terminated on 9 June 2003. On 19 August 2003, you received NJP for both your 2-day UA, and for dereliction in the performance of your duties on five (5) separate days. You did not appeal your NJP.

On 26 August 2003, your command notified you of administrative separation proceedings by reason of misconduct due to a pattern of misconduct and commission of a serious offense. You waived your rights to consult with counsel, submit written statements, and to request a hearing before an administrative separation board. Ultimately, on 7 October 2003, you were separated from the Navy for misconduct with an Other Than Honorable conditions (OTH) discharge characterization and were assigned an RE-4 reentry code.

On 7 August 2014, the Naval Discharge Review Board denied your initial discharge upgrade application. On 17 September 2018, this Board denied your petition for discharge upgrade relief. The decisional document noted, in part:

...the available evidence does not create a nexus between a mental health condition and your misconduct. The Board specifically noted that when you were evaluated in February 2001 and March 2001, your symptoms seemed at least in part due to the stress caused by your arrest for allegedly breaking and entering into a vehicle, occupational factors and pending disciplinary action.

...The Board concluded that even in consideration of the AO and the evidence provided with your application, that you failed to establish that you suffered from a condition or experience at the time of your service that excused or mitigated your misconduct of aiding and abetting larceny of personal property and that mitigated your receipt of an other than honorable discharge on the basis of a pattern of misconduct.

...The Board determined that your discharge was issued without error or injustice, and that corrective action is not warranted due to the absence of sufficient evidence to establish a nexus between your misconduct beginning in 2001 and a mitigating mental health condition.

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 for a discharge upgrade and change to your reason for separation. You contend that: (a) errors exist in this Board's prior decision with respect to failure to apply mental health provisions of the Kurta and Wilkie Memos, (b) errors exist in this Board's prior decision with respect to failure to consider and apply additional relevant criteria from the Kurta and Wilkie Memos, (c) errors exist in this Board's prior decision with respect to failure to properly apply the presumption of regularity, (d) new and relevant evidence relating to personal character – 1st and 3rd party statements, and (e) you feel guilty over civilian deaths, and this affected your mental health on active duty. For purposes of clemency and equity consideration, the Board considered the totality of the evidence you provided in support of your application.

After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. In accordance with the Hagel, Kurta, and Wilkie Memos, the Board gave liberal and special consideration to your record of service and your contentions about any traumatic or stressful events you experienced and their possible adverse impact on your service. However, the Board concluded that there was no convincing evidence of any nexus between any mental health conditions and/or related symptoms and your misconduct and determined that there was insufficient evidence to support the argument that any such mental health conditions mitigated the misconduct that formed the basis of your discharge. As a result, the Board concluded that your misconduct was not due to mental health-related conditions or symptoms. Even if the Board assumed that your misconduct was somehow attributable to any mental health conditions, the Board unequivocally concluded that the severity of your cumulative misconduct far outweighed any and all mitigation offered by such mental health conditions. The Board determined the record reflected that your misconduct was intentional and willful, and demonstrated you were unfit for further service. The Board also 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.

The Board did not believe that your record was otherwise so meritorious as to deserve a discharge upgrade. The Board concluded that significant negative aspects of your conduct and/or performance greatly outweighed any positive aspects of your military record. The Board determined that characterization under OTH conditions is appropriate when the basis for separation is the commission of an act or acts constituting a significant departure from the conduct expected of a Sailor.

As a result, the Board determined that there was no impropriety or inequity in your discharge and concluded that your misconduct and disregard for good order in discipline clearly merited your discharge. 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

