



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

█  
Docket No. 5841-24

Ref: Signature Date

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Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to 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 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 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 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 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). As part of the Board's review, a qualified mental health professional reviewed your request and provided the Board with an Advisory Opinion (AO). Although you were afforded an opportunity to submit a rebuttal, you chose not to do so.

You enlisted in the Navy and began a period of active duty on 9 August 2001. On 30 December 2003, you received nonjudicial punishment (NJP) for a period of unauthorized absence (UA) and for failure to obey a lawful order or regulation. You were also issued administrative remarks documenting your infractions and advising you that subsequent violations of the UCMJ (Uniform Code of Military Justice), conduct resulting in civilian conviction, or deficient conduct or performance of duty could result in administrative separation Under Other Than Honorable Conditions. On 12 May 2004, you received a second NJP for false or unauthorized pass. Consequently, you were notified of your pending administrative processing by reason of pattern of misconduct (POM), at which time you waived your rights to consult with counsel and to submit a written statement to the separation authority. Ultimately, the separation authority

directed you be discharged with a General (Under Honorable Conditions) (GEN) characterization of service and, on 21 May 2004, you were so discharged.

The Board carefully considered all potentially mitigating factors to determine whether the interest 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 and your contentions that you incurred PTSD and other mental health concerns during military service, you were an outstanding sailor and consistently earned performance evaluations of 3.0 or above, you believe you DD 214 does not accurately reflect your service or the significant challenges you faced due to mental health conditions, you experienced a severe bout of depression related to PTSD, you are currently rated at 70% for your disabilities, your struggles were compounded by your mother's diagnoses of bipolar disorder and schizophrenia, and you spiraled into alcohol misuse. Despite these challenges, you have shown resilience, earned a BA post-discharge and established yourself as a successful project manager. You are seeking a discharge upgrade to ensure your service record fully reflects the mitigating circumstances surrounding your mental health struggles and their impact on your performance. For purposes of clemency and equity consideration, the Board considered the evidence you submitted in support of your application.

Based on your assertions that you incurred mental health concerns during military service, which might have mitigated your discharge characterization of service, a qualified mental health professional reviewed your request for correction to your record and provided the Board with an AO on 24 September 2024. The AO stated in pertinent part:

There is no evidence that he was diagnosed with a mental health condition in military service, or that he exhibited any psychological symptoms or behavioral changes indicative of a diagnosable mental health condition. Temporally remote to his military service, the VA has granted service connection for diagnoses of PTSD and another mental health condition. Unfortunately, available records are not sufficiently detailed to provide a nexus with his misconduct, particularly as it is unclear how obtaining a false pass would be attributed to a symptom of a mental health condition. 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 that there is post-service evidence from the VA of diagnoses of PTSD and another mental health condition that may be attributed to military service. There is insufficient evidence to attribute his misconduct PTSD or another mental health concern."

After a thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined your misconduct, as evidenced by your NJPs, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and concluded that it showed a complete disregard for military authorities and regulations. Additionally, the Board noted you were provided an opportunity to correct your conduct deficiencies during your service; however, you continued to commit additional misconduct that led to your discharge. Further, the Board concurred with the AO that there is insufficient evidence to attribute your misconduct to PTSD or another mental

health concern. As the AO explained, your post-service diagnosis of a mental health condition is temporally remote to your military service. Lastly, the Board determined that an Honorable discharge was appropriate only if the member's service was otherwise so meritorious that any other characterization of service would clearly be inappropriate. The Board concluded by opining that certain negative aspects of your conduct and/or performance outweighed the positive aspects of your military record, even under liberal consideration standards for mental health conditions, and that your current GEN discharge characterization and no higher was appropriate. Therefore, the Board concluded that your discharge was proper and equitable under standards of law and discipline and that the discharge accurately reflects your conduct during your period of service.

Therefore, 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 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,

12/16/2024

