



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

██████████
Docket No. 5881-24
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 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 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 also considered the advisory opinion (AO) furnished by a qualified mental health professional. Although you were provided an opportunity to respond to the AO, you chose not to do so.

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 Navy and commenced active duty on 4 June 2003. On 10 February 2004, you were absent without leave after overstaying liberty until your surrender on 11 February 2004. On 4 April 2006, you received non-judicial punishment (NJP) for unauthorized absence

(UA) between 5 March 2006 and 8 March 2006, during which time you missed ship's movement on 8 March 2006.

On 17 June 2006, you were arrested by civil authorities and held in confinement until 19 September 2006; resulting in a 95 day UA. On 19 September 2006, you were convicted by the ██████████ of a domestic violence charge.

Unfortunately, the documents pertinent to your administrative separation are present in your official military personnel file (OMPF). Notwithstanding, the Board relies on a presumption of regularity to support the official actions of public officers and, in the absence of substantial evidence to the contrary, will presume that they have properly discharged their official duties. According to the information contained on your Certificate of Release or Discharge from Active Duty (DD Form 214), you were separated on 6 September 2019 with a General (Under Honorable Conditions) (GEN) characterization of service, your narrative reason for separation was "Misconduct (Civil Conviction)," your reentry code was "RE-4," and your separation code was "JKB;" which corresponds to "Misconduct (Civil Conviction)."

On 3 April 2013, the Naval Discharge Review Board considered your case and determined 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 characterization of service and your contention that you are 100% total and permanently disabled due to your military service. For purposes of clemency and equity consideration, the Board considered the evidence you provided in support of your application including your Department of Veterans Affairs (VA) benefits letters, and court documents. The Board noted you did not provide any advocacy letters or other evidence of post-discharge accomplishments.

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 17 October 2024. The AO noted in pertinent part:

There is no evidence that the Petitioner was diagnosed with a mental health condition during his military service, or that he exhibited any psychological symptoms or behavioral changes indicative of a mental health condition. He has provided no medical evidence in support of his claims. Unfortunately, his personal statement is not sufficiently detailed to establish clinical symptoms or provide a nexus with his requested change for narrative reason for separation. Additional records (e.g., active duty medical records, post-service mental health records describing the Petitioner's diagnosis, symptoms, and their specific link to her separation) would aid in rendering an alternate opinion.

The AO concluded, "it is my clinical opinion that there is insufficient evidence of a mental health condition that may be attributed to military service. There is insufficient evidence to attribute his misconduct 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 misconduct, as evidenced by your NJP, significant UA resulting from your civil conviction, and your civil conviction, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and likely negative impact your repeated and extensive absence had on the good order and discipline of your command. The Board also opined the nature of your conviction, whether or not ultimately expunged, does not excuse your conduct for the purpose of determining your suitability as a Sailor or the characterization of your service. Additionally, the Board concurred with the AO and determined that there is insufficient evidence of a mental health condition that may be attributed to military service, and insufficient evidence to attribute your misconduct to a mental health condition. As the AO noted, there is no evidence that you were diagnosed with a mental health condition in service or that you exhibited any psychological symptoms or behavioral changes indicative of a mental health condition. The Board further agreed that your statement was not sufficiently detailed to establish clinical symptoms or provide a nexus with your requested change for narrative reason for separation. The Board also agreed that additional records, as detailed above, would aid in rendering an alternate opinion. Finally, the Board determined you already received a large measure of clemency when the Navy chose to assign you a GEN characterization of service despite your record of misconduct.

As a result, the Board concluded significant negative aspects of your service outweigh the positive aspects and continues to warrant a GEN characterization. While the Board carefully considered the evidence you submitted in mitigation and commends you for your post-discharge completion of a domestic violence program, 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,

1/14/2025
