



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

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Docket No. 5904-24
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 limitations 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 15 January 2025. 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)/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 an advisory opinion (AO) from a qualified mental health professional. Although you were provided an opportunity to comment on 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.

After a period of Honorable service, you reenlisted and commenced a second period of active duty with the Navy on 12 December 2003. On 30 November 2004, you received non-judicial punishment (NJP) for disrespect toward a superior commissioned officer. On 26 June 2005, you received NJP for an unspecified violation of the Uniform Code of Military Justice. On 12 October 2005, you received a mental evaluation, which recommended you for administrative separation.

Unfortunately, the documents pertinent to your administrative separation are not 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. Your Certificate of Release or Discharge from Active Duty (DD Form 214), reveals that you were separated from the Navy on 12 October 2005 with a General (Under Honorable Conditions) (GEN) characterization of service, your narrative reason for separation is "Pattern of Misconduct," your separation code is "HKA," and your reenlistment code is "RE-4."

Post-discharge, you applied to the Naval Discharge Review Board (NDRB) for a discharge upgrade. On 1 July 2013, the NDRB denied your request after determining 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, reinstated your paygrade to E-5, reinstate qualifications, awards, and decorations, and change your narrative reason for separation. You contend that you incurred a mental health condition during military service due to pre-service post-traumatic stress disorder (PTSD), your post-service mental health treatments has helped with your PTSD, you volunteer at local schools, you serve in the community, and you obtained a Bachelor's Degree. For purposes of clemency and equity consideration, the Board considered the evidence you provided in support of your application.

As part of the Board's review, a qualified mental health professional reviewed your request and provided the Board with an AO. The mental health professional stated in pertinent part:

Petitioner contends that he sustained pre-service PTSD, which was exacerbated by in-service stressors leading to misconduct. The Petitioner was able to complete an honorable period of service until 2003 without incident. It is difficult to attribute his second period of service to pre-service PTSD given his ability to maintain proper conduct initially. Furthermore, repetitive issues of disrespect are not necessarily typical of one who is suffering from PTSD.

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. 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., post-service mental health records describing the Petitioner's diagnosis, symptoms, and their specific link to his 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 these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your NJPs, outweighed these mitigating factors. In making this finding, the Board considered the likely negative impact your conduct had on the good order and discipline of your command. The Board also concurred with the AO that there is insufficient evidence your misconduct could be attributed to a mental health condition. As explained in the AO, there is no evidence you were diagnosed with a mental health condition during your military service or that you exhibited any psychological symptoms or behavioral changes indicative of a mental health condition. 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 actions¹.

As a result, the Board concluded significant negative aspects of your active service outweigh the positive aspects and continues to warrant a GEN characterization of service. While the Board commends your post-discharge accomplishments and carefully considered the documentation 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 mitigated 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.

Regarding your request to add awards and decorations to your DD Form 214, the Board observed that you have not yet exhausted your administrative remedies by requesting an administrative correction with the Commander, Navy Personnel Command. Should you choose to pursue this correction, you may submit a request to Commander, Naval Personnel Command (PERS 312D1), at 5720 Integrity Drive, Millington, TN 38055-3120.

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

¹ Based on this finding, the Board also determined no change was warranted to your paygrade or narrative reason for separation.

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,

2/4/2025

