



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. 5959-24
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, 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). In addition, the Board considered the 4 April 2024 guidance from the Under Secretary of Defense for Personnel and Readiness relating to the consideration of cases involving both liberal consideration discharge relief and fitness determinations (Vazirani 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 Navy and commenced active duty on 5 January 2010. On 15 July 2015, you were honorably discharged followed by immediate reenlistment for a period of three years.

On 25 April 2018, you were charged with a Special Court-Martial (SPCM) for violating Article 86 of the Uniform Code of Military Justice (UCMJ), by being absent without authorization, violating Article 91 of the UCMJ, by using disrespectful language toward a Chief Petty Officer, violating Article 95 of the UCMJ, by resisting apprehension, violating Article 115 of the UCMJ, by feigning mental derangement before a disciplinary review board in order to avoid duty, violating Article 117 of the UCMJ, by use of provoking words, violating Article 128 of the UCMJ, by assault through screaming and pushing, and violating Article 134 of the UCMJ, by disorderly conduct and communicating threats.

Subsequently, on 5 July 2018, you submitted a request for separation in lieu of trial by court-martial (SILT) with a General (Under Honorable Conditions) (GEN) characterization of service. You additionally signed a statement admitting sufficient evidence existed to convict you of the above referenced charges.

On 12 July 2018, your commanding officer approved your request for discharge; but with an Other Than Honorable (OTH) characterization of service. On 15 July 2018, you were so discharged.

Post-discharge, you applied to the Naval Discharge Review Board (NDRB) for a discharge upgrade. The NDRB denied your request for an upgrade, on 25 August 2020, based on their determination that your discharge was proper as issued.

You then reapplied to the NDRB and, on 3 May 2022, the NDRB directed upgrade of your discharge characterization to GEN with a change of your narrative reason for separation and separation code to reflect Secretarial Authority. However, the NDRB noted your misconduct was too severe to warrant full upgrade to an Honorable (HON) characterization and did not direct change of your reentry code.

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, Wilkie, and Vazirani Memos. These included, but were not limited to, your desire to upgrade your discharge characterization and change your reason for separation to medical retirement. You contend that your misconduct resulted from PTSD following an automobile accident; from which you suffered injuries that did not received proper treatment. For purposes of clemency and equity consideration, the Board considered the evidence you provided in support of your application, 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 22 October 2024. The AO noted in pertinent part:

Petitioner was appropriately referred for psychological evaluation during his enlistment and properly evaluated during an inpatient hospitalization. His personality disorder diagnosis was based on observed behaviors and performance during his period of service, the information he chose to disclose to the mental health clinician, and the psychological evaluation performed by the mental health

clinician. A personality disorder diagnosis is pre-existing to military service by definition, and indicates lifelong characterological traits unsuitable for military service, since they are not typically amenable to treatment within the operational requirements of Naval Service. His in-service misconduct appears to be consistent with his diagnosed personality disorder, rather than evidence of PTSD or another mental health condition exacerbated by service.

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 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 SILT request, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the likely negative impact your misconduct had on the good order and discipline of your command. The Board also noted that the misconduct that led to your request to be discharged in lieu of trial by court-martial was substantial and determined that you already received a large measure of clemency when the convening authority agreed to administratively separate you in lieu of trial by court-martial; thereby sparing you the stigma of a court-martial conviction and possible punitive discharge. Further, the Board concurred with the AO that there is insufficient evidence of a mental health condition that may be attributed to your military service, and there is insufficient evidence to attribute your misconduct to a mental health condition. As explained in the AO, your in-service misconduct appears to be consistent with your diagnosed personality disorder, and not evidence of PTSD or another mental health condition exacerbated by your service. Lastly, the Board noted the NDRB already upgrade your discharge from OTH to GEN; which the Board found to be substantial clemency based on your record of misconduct.

Regarding your request for a disability retirement, the Board found no basis to grant your request. First, the Board noted you were never referred to the Disability Evaluation System for any disability condition. Second, the Board found insufficient evidence you suffered from a disability condition that was, in fact, unfitting. Third, and most importantly, even if a qualifying disability condition existed, you were ineligible for disability processing due to your administrative separation for misconduct that resulted in an OTH characterization of service¹. Service regulations directed that misconduct based processing supersede disability processing. Based on the Board determination that your SILT discharge was supported by your record, it also determined you remain ineligible for disability consideration.

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

¹ The fact your characterization of service was later upgraded to GEN did not persuade the Board an injustice exists with your case with regard to disability processing. In reviewing your record, the Board found substantial supporting evidence, including your SILT request, to support your originally assigned Other Than Honorable characterization of service.

considered the evidence you submitted in mitigation, even in light of the Kurta, Hagel, Wilkie, and Vazirani 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

