



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. 6191-24
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 you did not file your application in a timely manner, the Board waived the statute of limitation 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 20 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 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 to 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) of a qualified mental health provider. 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 16 July 1986. An administrative counseling entry, dated 20 November 1986, documented that you had been diagnosed with Adjustment Disorder with disturbance of conduct during a psychiatric evaluation and you were warned that failure to correct your behavior could result in administrative separation. On 1 December 1986, you were subject to nonjudicial punishment (NJP) for three violations of Article 92 of the Uniform Code of Military Justice (UCMJ) for failure to obey a lawful order or regulation due to uniform and hygiene violations. On 10 December 1986, you received a second

NJP for violation of Article 92 by failure to comply with the rules and regulations of correctional custody. You incurred two periods of unauthorized absence (UA) during normal working hours on 23 June and 27 July of 1987, and you were subject to a third NJP, on 25 August 1987, for your UA in July. In addition to a forfeiture of \$100 pay for 1 month, you were placed on restriction for a period of 10 days. On 4 September 1987, you received a fourth NJP due to your failure to attend restriction musters on five occasions. Consequently, you were notified of processing for administrative separation by reason of misconduct due to a pattern of misconduct and you elected to waive your rights to consult legal counsel and request a hearing before an administrative separation board. Your commanding officer forwarded a recommendation for your discharge under honorable conditions; specifying that all of your offenses had been minor and, whereas your offenses had shown that you were a misfit for the naval service and should be discharged consistent with your adjustment disorder diagnosis, those offenses were deemed not to warrant discharge under Other Than Honorable (OTH) conditions. However, Commander, Naval Military Personnel Command approved your discharge under OTH conditions.

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 and your contentions that you have been diagnosed with schizophrenia; which you believe may mitigate your in-service misconduct. You state that you are proud of your achievements during your military service and have become an outstanding member of society in the years since your discharge; in spite of your mental health disability. In support of your contentions and for clemency and equity consideration, you submitted letters from your psychiatrist, mental health care provider, and counselor, diagnostic records and service health records, and six letters in support of your post-discharge character.

Because you primarily contend that a mental health condition affected the circumstances of the misconduct which resulted in your discharge, the Board also considered the AO. The AO stated in pertinent part:

There is no evidence that the Petitioner was diagnosed with a mental health condition aside from an Adjustment Disorder. He has provided evidence of mental health diagnoses that are temporally remote to service. 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 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 seriousness of your misconduct and found that your conduct showed a complete disregard for military authority and regulations. Additionally, the Board concurred with the clinical

conclusion that there is insufficient evidence of a mental health condition that may be attributed to military serviced and insufficient evidence to attribute your misconduct to a mental health condition. As explained in the AO, your medical evidence is temporally remote to your service. The Board agreed that additional medical records describing your diagnosis, symptoms, and their specific link to his separation may aid in rendering an alternate opinion.

As a result, the Board concluded your conduct constituted a significant departure from that expected of a service member and continues to warrant an OTH characterization. While the Board carefully considered the evidence you submitted in mitigation and commends you on your post-discharge good character, 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 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,

1/17/2025

