



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

[REDACTED]
Docket No. 6298-24

Ref: Signature Date

[REDACTED]
[REDACTED]
[REDACTED]

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 13 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). Additionally, the Board also considered an advisory opinion (AO) furnished by qualified mental health provider. Although you were provided an opportunity to comment on the AO, you chose not to do so.

You enlisted in the U.S. Navy and began a period of active duty service on 22 August 1988. Your pre-enlistment physical examination, on 5 November 1987, and self-reported medical history both noted no psychiatric or neurologic issues or symptoms.

On 26 October 1988, your command issued you a "Page 13" warning (Page 13). The Page 13 expressly informed you that under Connecticut state law the minimum age for the purchase, possession, and/or consumption of alcoholic beverages is twenty-one (21) years of age. You

acknowledged being ordered to comply with these laws, both on and off base, and that a failure to comply with the order may be a cause for non-judicial punishment (NJP).

On 23 February 1989, while stationed at Service School Command, Orlando, Florida (SSC), you received NJP for three (3) separate specifications of failing to obey a lawful order. You did not appeal your NJP. On the same day, your command issued you a Page 13 retention warning documenting your NJP and your failure to adapt to the military environment as evidenced by your unwillingness or inability to obey naval rules and regulations. The Page 13 advised you that any further deficiencies in performance and/or conduct may result in disciplinary action and/or processing for an administrative discharge. You did not submit a Page 13 rebuttal statement.

On 24 March 1989, you received NJP at SSC for unauthorized absence (UA) and for breaking restriction. You did not appeal your second NJP. On 4 May 1989, you received NJP at SSC for failing to obey a lawful order or regulation when you engaged in underage drinking. You did not appeal your NJP.

On or about 10 May 1989, you underwent an alcohol dependency evaluation following an incident where you were hospitalized for acute alcohol intoxication with a blood alcohol content of 0.127. The screening officer determined there was no evidence of any alcohol dependence and recommended your enrollment in NADSAP for drug and alcohol abuse education and self-awareness.

On 30 May 1989, your command notified you of administrative separation proceedings by reason of misconduct due to a pattern of misconduct. On 2 June 1989, you consulted with counsel and elected to request a hearing before an administrative separation board (Adsep Board).

In the interim, your separation physical examination and self-reported medical history noted no neurologic or psychiatric issues or symptoms. While your Adsep Board was still pending, on 22 June 1989, you received your fourth and final NJP at SSC for UA and two (2) separate specifications of failing to obey a lawful order/regulation. You did not appeal your NJP.

On 12 July 1989, an Adsep Board convened in your case. At the Adsep Board, you were represented by counsel. Following the presentation of evidence and any witness testimony, the Adsep Board members unanimously recommended that you committed misconduct as charged and that you be separated with an under Other Than Honorable conditions (OTH) discharge characterization. Ultimately, on 25 August 1989, you were discharged from the Navy for misconduct with an OTH discharge characterization and were assigned an RE-4 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, and Wilkie Memos. These included, but were not limited to, your desire for a discharge upgrade and contentions that: (a) your anxiety began after a tough enlistment, (b) from 1988 to 1989 a few of your shipmates died in the USS IOWA explosion in April 1989 and you were constantly anxious and feared for your life daily, (c) you had trouble sleeping while enlisted and developed severe

anxiety and depression, (d) you were not aware at the time that your discharge would be listed as OTH, and (e) you continue to suffer from anxiety and depression. For purposes of clemency and equity consideration, the Board considered the entirety of the evidence you provided in support of your application.

A licensed clinical psychologist (Ph.D.) reviewed your contentions and the available records, and issued an AO dated 24 October 2024. As part of the Board's review, the Board considered the AO. The AO stated 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.

The Ph.D.'s 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. In accordance with the Hagel, Kurta, and Wilkie Memos, the Board gave liberal and special consideration to your record of service and your contentions about any traumatic or stressful events you experienced and their possible adverse impact on your service. However, the Board concluded that there was no convincing evidence that you suffered from any type of mental health condition while on active duty, or that any such mental health condition was related to or mitigated the misconduct that formed the basis of your discharge. As a result, the Board concluded that your misconduct was not due to mental health-related conditions or symptoms. Additionally, even if the Board assumed that your misconduct was somehow attributable to any mental health conditions, the Board unequivocally concluded that the severity of your misconduct far outweighed any and all mitigation offered by such mental health conditions. The Board determined the record reflected that your misconduct was intentional and willful and demonstrated you were unfit for further service. The Board also 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 actions.

The Board did not believe that your record was otherwise so meritorious as to deserve a discharge upgrade. The Board concluded that significant negative aspects of your conduct and/or performance greatly outweighed any positive aspects of your military record. The Board determined that characterization under OTH conditions is appropriate when the basis for separation is the commission of an act or acts constituting a significant departure from the conduct expected of a Sailor.

As a result, the Board determined that there was no impropriety or inequity in your discharge and concluded that your misconduct and disregard for good order in discipline clearly merited your discharge. 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. 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,

1/8/2025

