



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

Docket No. 6382-24  
Ref: Signature Date

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 26 February 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 (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 and your response to the AO.

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 began a period of active duty on 13 July 1978. On 1 November 1978, you received non-judicial punishment (NJP) for a period of unauthorized absence (UA). On 26 March 1979, you received your second NJP for a period of UA and missing ship's movement. On 8 December 1979, you were found guilty by a summary court-martial (SCM) of

a period of UA totaling 94 days. On 19 February 1980, you received your third NJP for a period of UA.

Unfortunately, some documents pertinent to your administrative separation proceedings are not in your official military personnel file. 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. On 21 February 1980, your commanding officer (CO) recommended to the separation authority (SA) that you be separated from the Navy with a General (Under Honorable Conditions) (GEN) characterization of service by reason of frequent involvement of a discreditable nature with military authorities. As part of the CO's recommendation, he stated in pertinent part:

[Petitioner] has not benefited from chain of command counseling or NJP/SCM punishment awarded. He requires an excessive amount of supervision, and his work output is usually not worth the supervision effort expended. [Petitioner] has been continuing disciplinary and administrative burden, being detrimental to good order and discipline. His discharge from the naval service is highly recommended.

The separation authority approved the recommendation but disagreed with the characterization of service recommendation and directed that you be discharged with an Other Than Honorable (OTH) characterization of service. You were so discharged on 21 May 1980.

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 character of service and contention that your discharge character of service is in error and unjust because: (1) three of your four periods of UA were short in duration and "minor" and, therefore, insufficient to find the "significant departure" from conduct expected of enlisted service members, (2) your assigned character of service was based solely on periods of UA that, even in the aggregate, did not meet the 180-day threshold for a bar to benefits, (3) there were several important mitigating and extenuating circumstances involved in your periods of UA, such as your age, education level, judgmental immaturity, knee injury, and your family emergency surrounding your longest period of UA, (4) your assigned character of service went against your CO's recommendation, and (5) in retrospect you were suffering from PTSD because of the sexual trauma you experienced prior to your active duty service. For purposes of clemency and equity consideration, the Board considered the documentation you provided in support of your application.

As part of the Board's review, a qualified mental health professional reviewed your contentions and the available records and provided the Board with an AO on 6 January 2025. The AO stated in pertinent part:

There is no evidence that he was diagnosed with a mental health condition in military service, or that he exhibited any psychological symptoms or behavioral changes indicative of a diagnosable mental health condition. Throughout his disciplinary processing, there were no concerns raised of a mental health condition

that would have warranted a referral for evaluation. He has provided no medical evidence in support of his claims. Unfortunately, his personal statement is not sufficiently detailed to establish clinical symptoms in service or provide a nexus with his misconduct. Additional records (e.g., post-service mental health records describing the Petitioner's diagnosis, symptoms, and their specific link to his misconduct) may aid in rendering an alternate opinion.

The AO concluded, "it is my clinical opinion that there is insufficient evidence of a diagnosis of PTSD or another mental health condition that may be attributed to military service. There is insufficient evidence to attribute his misconduct to PTSD or another mental health condition."

In response to the AO, you submitted a statement, advocacy letters and additional medical records that provided additional clarification of the circumstances of your case. The medical records submitted which included evidence of a hospital admission from May to October 2003 for a diagnosis of PTSD, Cocaine, and Alcohol Dependence.

After reviewing your rebuttal evidence, the AO conclusion was revised to state, "There is post-service evidence from VA and civilian providers of diagnoses of PTSD and other mental health concerns that may have been present during military service. There is insufficient evidence to attribute his misconduct to PTSD or another 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 NJPs and SCM conviction, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and concluded your misconduct showed a complete disregard for military authority and regulations. The Board observed that you were given an opportunity to correct your conduct deficiencies but chose to continue to commit misconduct, which led to your OTH discharge. Your conduct not only showed a pattern of misconduct but was sufficiently pervasive and serious to negatively affect the good order and discipline of your command. Further, the Board concurred with the AO that there is insufficient evidence of a diagnosis of PTSD or another mental health condition that may be attributed to military service and there is insufficient evidence to attribute your misconduct to PTSD or another mental health condition. As the AO explained, your personal statement is not sufficiently detailed to establish clinical symptoms in service or provide a nexus with your misconduct. Further, the Board agreed there is no evidence that you were diagnosed with a mental health condition in military service or that you exhibited any psychological symptoms or behavioral changes indicative of a diagnosable 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 otherwise not be held accountable for your actions.

Finally, contrary to your contentions, the Board concluded that your administrative separation was legally and factually sufficient, and in compliance with all Department of the Navy directives and policy at the time of your discharge. The Board noted that your three NJPs and SCM conviction were more than sufficient to meet the threshold of what constituted frequent involvement of a discreditable nature with military authorities and amounted to a significant departure from conduct expected of a service member. Additionally, the Board found no error or

injustice with the separation authority's decision not to adopt the commanding officer's recommendation. The Board pointed out it also found your conduct to be discreditable and that your commanding only provided a recommendation; which, by definition, is not binding on the separation authority.

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 and discipline clearly merited your discharge. While the Board carefully considered the evidence you submitted in mitigation and commends you for your post-discharge rehabilitation, 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,

3/20/2025

