



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. 6409-24
Ref: Signature Date

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Dear █

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 9 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). The Board also considered the advisory opinion (AO) furnished by a qualified mental health professional. Although you were provided an opportunity to respond to the AO, you chose not to do so.

You enlisted in the Navy and commenced active duty on 1 September 2004. On 25 February 2005, you were disenrolled from Information Systems Technician A-school for non-academic reasons. 9 March 2005, you received non-judicial punishment (NJP) failure to go to appointed place of duty, failure to obey a lawful order, and misbehavior of a sentinel for sleeping on post. Additionally, you were issued an administrative remarks (Page 13) counseling concerning deficiencies in your performance and/or conduct. You were advised that any further deficiencies in your performance and/or conduct may result in disciplinary action and in processing for administrative discharge. On 14 December 2005, you commenced a period of unauthorized absence (UA) that ended in your surrender on 7 January 2006. On 23 January 2006, you received NJP for that UA. Consequently, you were notified of pending administrative separation

processing with an Under Other Than Honorable conditions (OTH) discharge by reason of misconduct due to pattern of misconduct and commission of a serious offense. You waived your rights to consult counsel, submit a statement, or have your case heard by an administrative discharge board. The separation authority directed a General (Under Honorable Conditions) (GEN) characterization of service and you were so discharged on 7 March 2006.

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 change your discharge characterization of service and your contention that you reported mental health concerns and physical assaults to your chain of command but did not receive help. For purposes of clemency and equity consideration, the Board noted you did not provide supporting documentation describing post-service accomplishments or advocacy letters.

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 28 October 2024. The AO stated in pertinent part:

Petitioner contends he incurred Post Traumatic Stress Disorder (PTSD) and other mental health concerns during the military, which may have contributed to the circumstances of his separation from service.

Petitioner has been granted service connection for Major Depressive Disorder (MDD) with anxious distress, effective February 2021. He submitted a January 2022 civilian psychological evaluation in which he described traumatic incidents of racially motivated harassment, and being placed in the brig and denied access to his family after reporting mental health symptoms. Petitioner was diagnosed with PTSD; MDD, moderate, recurrent episode, with anxious distress; and Alcohol Use Disorder, mild. Additional information was needed to rule out the possible presence of Schizoaffective Disorder, depressive type or Borderline Personality Disorder, moderate.

There is no evidence that he was diagnosed with a mental health condition in military service. Temporally remote to his military service, the VA has granted service connection for a mental health condition and a civilian psychologist has diagnosed PTSD attributed to military service. Unfortunately, available records are not sufficiently detailed to establish a nexus with his misconduct. While UA and insubordination could be associated with irritability and avoidance associated with PTSD symptoms, in this case there is insufficient information regarding the Petitioner's experience in service to make that determination. More weight has been placed on the extended period of time prior to symptoms of sufficient interference as to require intervention over the Petitioner's current report.

The AO concluded, "it is my clinical opinion that there is post-service evidence from the VA of a mental health condition that may be attributed to military service. There is post-service evidence from a civilian psychologist of a diagnosis of PTSD that may be attributed to 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, 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. The Board also considered the likely negative impact your repeated misconduct had on the good order and discipline of your command. The Board noted that you were given an opportunity to address your conduct issues but you continued to commit misconduct; which ultimately led to your discharge for a pattern of misconduct. The Board further noted that that you were already afforded considerable clemency when your commanding officer approved a GEN characterization of service. Finally, the Board concurred with the AO and determined that, while there is post-service evidence from the VA of a mental health condition that may be attributed to military service and post-service evidence from a civilian psychologist of a diagnosis of PTSD that may be attributed to military service, there is insufficient evidence to attribute your misconduct to PTSD or another mental health condition. As explained in the AO, while UA and insubordination could be associated with irritability and avoidance associated with PTSD symptoms, in this case there is insufficient information regarding your experience in service to make that determination. 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 actions.

As a result, the Board concluded that significant negative aspects of your service outweighed the positive aspects and continues to warrant a GEN characterization. While the Board carefully considered the evidence you submitted, 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,

1/9/2025

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