



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

█  
Docket No. 6496-24  
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 27 November 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 an advisory opinion (AO) from 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 United States Navy and began a period of active duty on 27 September 1979. On 6 June 1980, you received administrative counseling (Page 13) remarks for unauthorized absence (UA). On 19 August 1980, you received non-judicial punishment (NJP) for UA and disrespect. On 2 February 1981, you received a Page 13 for frequent involvement of a discreditable nature with military authorities. On 4 April 1981, you commenced a period of UA that ended with your apprehension on 18 May 1981. On 19 June 1981, you commenced another period of UA that ended with your apprehension on 22 June 1981. On 27 September 1982, you commenced another period of UA that ended on 11 October 1982. On 15 October 1982, you received your second NJP for that period of UA. On 12 November 1982, a general court-martial

(GCM) convicted you of two specifications of unauthorized absence<sup>1</sup>, three specifications of wrongfully damaging government property and five specifications of larceny. Subsequently, you commenced another period of UA and were declared a deserter on 21 March 1983. On 29 August 1984, you were apprehended by civil authorities and later convicted of public drunkenness and possession of marijuana on 1 September 1984. After you were returned to military custody a special court-martial (SPCM) convicted you for the period of UA and sentenced you, in part, to a Bad Conduct Discharge (BCD). After completion of all levels of review, you were discharged with a BCD on 13 June 1986.

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 contentions that: (1) your reason for the BCD was during to being AWOL, (2) you were experiencing mental health issues due to racism from your superiors and fellow Sailors, (3) you were constantly being forced into altercations, (4) you were scared for your life and you received no assistance from your chain of command and, (5) you chose to go AWOL to avoid the daily harassment. For purposes of clemency and equity consideration, the Board noted you provided a copy of your DD Form 214.

Because you contend that other mental health impacted your misconduct, the Board considered the AO dated 8 October 2024. The AO stated in pertinent part:

There is no evidence that the Petitioner was diagnosed with a mental health condition while in the 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., mental health records describing the Petitioner's diagnosis, symptoms, and their specific link to his misconduct) would aid in rendering an alternate opinion.

The AO concluded, "it is my clinical opinion there is insufficient evidence of mental health symptoms 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 your potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your NJPs, SPCM, and GCM, 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 effect your misconduct had on the good order and discipline of your command. The Board found your conduct not only showed a pattern of misconduct but was sufficiently serious to negatively affect the good order and discipline of your command. Further, the Board concurred

---

<sup>1</sup> These specifications were for the periods of UA in 1981

with the AO that there is insufficient evidence that your misconduct could be attributed to a mental health condition. As explained in the AO, no evidence that you were diagnosed with a mental health condition while in the military service or that you exhibited any symptoms of a mental health condition. Additionally, the Board agreed that your statement is not sufficiently detailed to provide a nexus with your misconduct. 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. Additionally, the Board observed you were provided multiple opportunities to correct your conduct deficiencies but chose to continue to commit misconduct; which ultimately led to your BCD. Finally, the Board noted that you provided no evidence, other than your statement, to substantiate your contentions of mistreatment.

As a result, the Board determined your conduct constituted a significant departure from that expected of a service member and continues to warrant a BCD. 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. 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,

1/6/2025

■

Executive Director

Signed by: ■