



**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. 6550-24  
Ref: Signature Date

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Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to 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 25 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). The Board also considered the advisory opinion (AO) furnished by a qualified mental health professional and your response to the AO.

After serving honorably in the █ National Guard and receiving a waiver for marijuana use, you enlisted in the Navy and commenced active duty on 6 April 2000. On 9 March 2001, you received non-judicial punishment (NJP) for unauthorized absence (UA). 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 5 April 2001, you received NJP for insubordinate conduct toward a non-commissioned officer, wearing an unauthorized insignia, badge, ribbon device, or pin, and

two specifications of breaking restriction. On 8 December 2003, you received NJP for two specifications of false official statements.

Unfortunately, the documents pertinent to your administrative separation are not in your official military personnel file (OMPF). 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. Based on the information contained on your Certificate of Release or Discharge from Active Duty (DD Form 214), you were separated on 9 January 2004 with a “General Under Honorable Conditions” (GEN) characterization of service, your narrative reason for separation is “Pattern of Misconduct,” your reentry code is “RE-4,” and your separation code is “HKA,” which corresponds to misconduct – pattern of misconduct (board waiver).

You previously applied to this Board for a change to your reenlistment code where you contended that your discharge unjust because some of your misconduct was justified and you performed your duties in an exemplary manner that outweighed your misconduct. The Board denied your request on 12 September 2005.

Subsequently, you applied to the Naval Discharge Review Board (NDRB) for a discharge upgrade. The NDRB denied your request for an upgrade, on 30 November 2006, based on their determination that your discharge was proper as issued.

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 contentions that you were diagnosed with a mental health condition in 2023 that you believe mitigates your in-service misconduct, your pre-service Honorable service in the █ National Guard should factor into your Navy characterization of service, and you have since made positive changes in your life, earned Bachelor’s and Master’s Degrees, and contributed to society through your work as a teacher. For purposes of clemency and equity consideration, the Board considered your statement, resume, counseling report, academic transcript, █ National Guard statement of service, and Department of Veterans Affairs appeal you provided.

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 10 October 2024. The AO stated in pertinent part:

Petitioner contends he suffered from undiagnosed mental health concerns during military service, which may have contributed to the circumstances of his separation.

In his previous request for review, he stated that he inadvertently “omitted two civilian charges against me on an SF-86 clearance application, one was dismissed, and one resulted in a conviction (disturbing the peace).” He stated that his UA was due to denied leave to visit his fiancé. He claimed that his insubordination was

related to not adjusting his uniform to reflect a reduction in rank following NJP and having unauthorized reading material in the barracks.

Petitioner contended he was suffering from undiagnosed symptoms of mental health concerns during military service, which may have contributed to his misconduct.

Petitioner provided the record of a February 2023 psychiatric evaluation in which he was diagnosed with Bipolar I Disorder, Moderate Depressed.

*“The patient stated that he has never sought treatment before but has suspected for a while that he may have bipolar disorder...He also said that he is about to apply for benefits through the armed services...He recently found out that if he has a psychiatric problem that may explain some of his problems, he thinks he could possibly still qualify for benefits. He admitted that he has been severely depressed since he lost a lot of money in the cryptocurrency market back in May 2021. He rated himself as severely depressed on the PHQ-9 [a self-report measure] today, but he did not appear to have this level of depression when I interview him...The patient acknowledged having significant mood swings in the past. The patient acknowledged previous episodes of elevated or expansive mood...He admitted going to court while in the Navy after he threatened a guy who was hitting on his wife at the gym with a gun [sic]. He was charged for brandishing a firearm and disturbing the peace. This caused him to lose his top secret clearance in the military. He was told that he would have to be reassigned to a ship. However, he had an option to get a discharge below the level of honorable.”*

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.

Temporally remote to his military service, he has received a diagnosis of a mental health condition that he claims was also present during military service. While it is possible that he may have been experiencing prodromal symptoms of Bipolar Disorder during military service, it is difficult to attribute his misconduct to undiagnosed mental health concerns given the extensive amount of time that passed prior to seeking treatment. It does not appear that the Petitioner’s mental health symptoms were sufficiently interfering as to require treatment for almost 20 years after his military service.

There are inconsistencies in his current report of his military service with the information in his service record that raise doubt regarding the Petitioner’s candor or the reliability of his recall during his evaluation. For example, the Petitioner stated that he lost his clearance defending his wife’s honor, but the record indicates that it was information undisclosed during the clearance process that impacted his clearance and resulted in NJP. Additionally, it is difficult to attribute purportedly inadvertent false official statements to a mental health condition. Unfortunately,

available records are not sufficiently detailed to establish a nexus with his misconduct.

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.”

In response to the AO, you provided a personal statement that supplied additional clarification of the circumstances of your case as well as a recently submitted VA appeal letter. After reviewing your rebuttal evidence, the AO remained unchanged.

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 the likely negative impact your repeated misconduct had on the good order and discipline of your command. The Board noted that you were given multiple opportunities to address your conduct issues, but you continued to commit misconduct; which led to your discharge for a pattern of misconduct. Additionally, the Board concurred with the AO and determined that there is insufficient evidence of a mental health condition that may be attributed to military service and insufficient evidence to attribute your misconduct to a mental health condition. As explained in the AO, it is difficult to attribute your misconduct to undiagnosed mental health concerns given the extensive amount of time that passed prior to seeking treatment. 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<sup>1</sup>. While the Board carefully considered the evidence you submitted in mitigation and commends your post-discharge accomplishments, 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

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<sup>1</sup> This determination was based solely on your Navy active duty service. The Board considered your ARNG service as mitigation evidence only.

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,

12/20/2024

