



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

Docket No. 6663-24
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 18 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). 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 Navy and began a period of active duty on 17 September 1991. On 3 February 1993, you received a non-judicial punishment (NJP) for provoking speeches and assault. On 3 February 1993, you were assigned extra military instruction (EMI) to correct your deficiencies regarding your failure to remain at your place of duty. On 8 February 1993, you received administrative remarks (Page 13) retaining you in service but you were warned that continued misconduct may resulted in administrative separation processing. On 12 March 1993, you received your second NJP for disobedience. On 1 April 1993, you received your third NJP for two specifications of willfully disobeying a lawful order. On 3 February 1994, you were counseled after being found in berthing watching television instead of at your workstation.

Between February 1994 and September 1994, you received multiple counselings due to various performance and conduct deficiencies. On 7 October 1994, you received your fourth NJP for unauthorized absence, disobeying an order, and drunk and disorderly conduct. Consequently, you were notified of administrative separation processing due to commission of a serious offense. You elected to speak with counsel and present your case to an administrative separation board. On 10 November 1994, an administrative separation board found evidence of misconduct and recommended that you be discharged with an Other Than Honorable (OTH) characterization of service. Your commanding officer concurred with the findings and forwarded your separation package to the separation authority (SA). The SA approved the recommendation and you were so discharged on 20 January 1995.

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) you were not informed of the charges against you, (2) you requested counsel and were denied representation, (3) you wanted a trial but were denied, and (4) you did not get due process to plead your case. For purposes of clemency and equity consideration, the Board considered the documentation you provided in support of your application.

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

The Petitioner submitted an outpatient intake dated April 2024, which notes a diagnosis of Unspecified Mood Disorder. The note also mentions that Petitioner stated he needed an assessment pursuant to upgrading his discharge characterization. He submitted a document from RHA Health Services, (also dated April 2024) noting a diagnosis of PTSD. The second note reflects that the Petitioner stated he served in Iraq and “killed people,” however his MOS was an electrical equipment repairman and food service attendant. 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 post-service evidence of mental health conditions that are temporally remote to service. 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. Additional records (e.g., active duty medical records, post-service mental health records describing the Petitioner’s diagnosis, symptoms, and their specific link to his separation) would aid in rendering an alternate opinion.

The AO concluded, “it is my clinical opinion 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 your potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your NJPs and multiple counselings, 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 observed you were given multiple opportunities to correct your conduct deficiencies and 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, contrary to your contentions regarding denial of due process, the Board found ample evidence that you were afforded all the required due process prior to your administrative separation. Your record contains acknowledgement of your rights, evidence that you consulted with legal counsel, and the record of your administrative separation board. These documents were sufficient for the Board to determine your allegations were unfounded. Finally, the Board concurred with the AO that there is insufficient evidence that your misconduct could be attributed to a mental health condition. As explained in the AO, there is no evidence that you were diagnosed with a mental health condition while in military service or that you exhibited any symptoms of a 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 not be held accountable for your actions.

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

2/5/2025

