



**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. 6723-24  
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 17 January 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 (PTSD) (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). Additionally, the Board also considered an advisory opinion (AO) furnished by qualified mental health provider and your AO rebuttal submission.

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 U.S. Navy and began a period of active-duty service on 17 September 2003. Your pre-enlistment physical examination, on 30 September 2002, and self-reported medical history both noted no psychiatric or neurologic issues, history, or symptoms. On 23 July 2004, you reported for duty on board the ██████████ in ██████████ ██████████.

On 22 August 2005, you received non-judicial punishment (NJP) for failing to obey a lawful order or regulation and unauthorized absence (UA). You did not appeal your NJP. Based on information provided by you and your counsel, your UA was apparently related to being held by civilian authorities after you attempted to evade law enforcement authorities on your motorcycle. On 13 October 2005, you received NJP for failing to obey a lawful order or regulation, but the charge was dismissed with a warning.

On 21 April 2006, you received NJP for dereliction in the performance of duty. You did not appeal your NJP. On 27 June 2006, you received NJP for four (4) separate specifications of failing to obey a lawful order or regulation (drinking onboard ship, consuming alcohol in a duty status, breaking curfew, and failing to stand a proper watch). You did not appeal your NJP.

On 27 June 2006, your command notified you of administrative separation proceedings by reason of misconduct due to a pattern of misconduct and commission of a serious offense. On 31 July 2006, you elected to consult with counsel but waived your rights to submit statements and to request a hearing before an administrative separation board.

On 3 August 2006, the Separation Authority approved and directed your separation with an under Other Than Honorable conditions (OTH) characterization of service. On 9 August 2006, your separation physical examination noted no psychiatric or neurologic issues, history, or symptoms. Ultimately, on 24 August 2006, you were separated from the Navy for misconduct with an OTH discharge characterization and were assigned an RE-4 reentry code.

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 for a discharge upgrade and contentions that: (a) you suffered from mental stress and anxiety developed while in a combat zone during War on Terrorism campaign, (b) post-service you have had an exemplary career for the last 18 years – you have worked full time during the day, and went to school full time at night, and were able to attain a B.S. in Computer Science with 3.85 GPA, and a Masters in Information Systems with a 3.9 GPA, (c) you have gone into a corporate career and been promoted every two years on average, moving into a leadership position at a Fortune 20 company leading 500+ within your organization, and currently moved to a financial insurance company as a Director, (d) in all cases of your career post military, you have improved significantly without the stress of combat duty and anxiety, (e) the last 18 years have allowed you to development myself with a consistent track record of performance, growth, and showcasing the quantitative value you have brought to all organizations that you have worked with, (f) your dream of serving until retirement was cut short after an instance of youthful indiscretion resulted in increased attention and scrutiny from your command leadership, (g) your instances of misconduct have been grossly exaggerated after mitigating factors were ignored and

you were essentially found guilty by association, (h) there is no evidence indicating that you intentionally fell asleep on watch or that you were drunk on duty, (i) the fact that you were punished for these two allegations despite scant evidence and mitigating circumstances showed that your command was more inclined to disregard key details and punish rather than seek the truth and respond appropriately, (j) you were not afforded the opportunity at rehabilitation, (k) a review of your service record and post-service achievements clearly demonstrate that you could have overcome the circumstances you were facing and continued to provide useful service to the Navy, (l) you were experiencing symptoms associated with anxiety that were caused as a result of undue workplace harassment, and (m) the Board has previously voted in favor of relief for applicants in similar situations. For purposes of clemency and equity consideration, the Board considered the totality of the evidence you provided in support of your application.

A licensed clinical psychologist (Ph.D.) reviewed your contentions and the available records, and issued an AO dated 16 October 2024. As part of the Board's review, the Board considered the AO. 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. While it is possible that he may have incurred PTSD from combat exposure, he has provided no medical evidence in support of his claims. He has provided evidence of medication treatment that is temporally remote to his military service and appears unrelated. Unfortunately, his personal statement is not sufficiently detailed to establish clinical symptoms in service or provide a nexus with his misconduct.

The Ph.D. concluded, "it is my clinical opinion that there is insufficient evidence of a diagnosis of PTSD that may be attributed to military service. There is insufficient evidence to attribute his misconduct to PTSD."

Following a review of your AO rebuttal submission, the Ph.D. did not change or otherwise modify their original AO. The Ph.D. noted that you subsequently provided evidence of post-service mental health treatment from January 2018 to October 2024 for an initial diagnosis of adjustment disorder related to your divorce, family relationships, and employment stress. The Ph.D. also noted that your recent mental health treatment records listed a diagnosis of generalized anxiety disorder but there was no mention of military service as a topic of treatment or a stressor in the treatment notes and no evidence of a service-connected mental health condition or PTSD diagnosis.

After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. In accordance with the Hagel, Kurta, and Wilkie Memos, the Board gave liberal and special consideration to your record of service and your contentions about any traumatic or stressful events you experienced and their possible adverse impact on your service. However, the Board concluded that there was no convincing evidence of any nexus between any purported mental health conditions and/or related symptoms and your misconduct and determined that there was insufficient evidence to support the argument that any such mental health conditions mitigated the misconduct that formed the basis of your discharge. As a result,

the Board concluded that your misconduct was not due to mental health-related conditions or symptoms. Even if the Board assumed that your misconduct was somehow attributable to any mental health conditions, the Board concluded that the severity of your cumulative misconduct far outweighed any and all mitigation offered by such mental health conditions. The Board determined the record reflected that your misconduct was intentional and willful, and demonstrated you were unfit for further service. The Board also 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.

The Board also noted that a majority of your substantiated misconduct occurred prior to your ship departing on 2 May 2006 as part of the Global War on Terrorism Surface Strike Group ██████████. Thus, the Board was not persuaded that you were suffering from any purported mental stress and anxiety due to serving in a combat area at the time of your first two NJPs. Moreover, the Board disagreed with your proffered evidentiary and due process arguments regarding certain NJP offenses. The Board was keenly aware that if you disputed such guilty findings, you had every right to appeal your NJP to higher authority. However, the Board noted that you did not appeal any of your NJPs at such time and the Board was not willing to re-litigate the well-settled facts and findings of your case. The Board determined that you failed to provide sufficient evidence to overcome the presumption of regularity in your case. Accordingly, the Board unequivocally 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 observed that character of military service is based, in part, on conduct and overall trait averages which are computed from marks assigned during periodic evaluations. Your overall active duty trait average calculated from your available performance evaluations during your enlistment was approximately 2.0 in conduct. Navy regulations in place at the time of your discharge recommended a minimum trait average of 2.5 in conduct (proper military behavior), for a fully honorable characterization of service. The Board concluded that your cumulative misconduct was not minor in nature and that your conduct marks during your active duty career were a direct result of your serious misconduct and a failure to conform to basic military standards of good order and discipline, all of which further justified your OTH characterization.

The Board did not believe that your record was otherwise so meritorious as to deserve a discharge upgrade. The Board concluded that significant negative aspects of your conduct and/or performance greatly outweighed any positive aspects of your military record. The Board determined that characterization under OTH conditions is appropriate when the basis for separation is the commission of an act or acts constituting a significant departure from the conduct expected of a Sailor.

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 in discipline clearly merited your discharge. While the Board carefully considered the evidence you submitted in mitigation, including your noteworthy post-service 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 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,

1/23/2025

