



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

Docket No. 6869-24  
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 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, 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)/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 2 March 1981. Prior to enlisting, you disclosed pre-service driving under the influence and reckless driving offenses and received a waiver for pre-service marijuana use. On 5 January 1983, you received non-judicial punishment (NJP) for unauthorized absence (UA) from 16 November 1982 to 18 November 1982, two specifications of absence from appointed place of duty, and disobeying a lawful order. 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 2 July 1983, you commenced a period of UA, during which you missed movement and were declared a deserter, that ended in your surrender on 6 February 1984.

On 27 March 1984, you pleaded guilty at Special Court Martial (SPCM) to UA from 2 July 1983 to 6 February 1984. You were sentenced to reduction in rank to E-1, forfeitures, confinement, and a Bad Conduct Discharge (BCD). You were released from confinement on 25 April 1984 and commenced appellate leave the same day. Subsequently, the findings and sentence in your SPCM were affirmed and you were issued a BCD on 28 August 1985.

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 your fiancé threatened to abort your child, so you went UA, and that your mental condition was exacerbated by these events. 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 23 October 2024. The AO stated in pertinent part:

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

Petitioner submitted VA Disability Benefits Questionnaire (DBQ) indicating diagnosis of Depressive Disorder due to sentinel events during time in service. He also submitted VA notice that service was dishonorable.

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 a diagnosis of Depressive Disorder that is temporally remote to service.

The AO concluded, "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 SPCM and NJP, 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 the opportunity to address your conduct issues but you continued to commit misconduct; which ultimately led to your BCD. Finally, 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, the medical evidence you provided is temporally remote to your service. 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 your conduct constituted a significant departure from that expected of a service member and continues to warrant a BCD. 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,

1/9/2025

