



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

██████████
Docket No. 6990-24
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 15 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 the 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.

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. Marine Corps and began a period of active duty on 1 November 2004. On 13 October 2005, you received non-judicial punishment (NJP) for being absent from your appointed place of duty, failure to obey an order, and making a false official statement. You were

subsequently issued a counseling warning, on 14 October 2005, and advised that failure to take corrective action and any further violations of the UCMJ may result in judicial or adverse administrative action including but not limited to administrative separation. On 18 October 2005, you submitted an appeal to your NJP. Your appeal was denied on 16 May 2006.

On 21 October 2005, you received your second NJP for being absent from your place of duty and failure to obey an order. A portion of your punishment was suspended for six months. On 7 February 2006, the Commanding Officer (CO) vacated the suspended portion of your NJP punishment due to disobeying a superior commissioned officers and failure to obey a lawful order.

Consequently, you were notified for separation for misconduct due to pattern of misconduct and you elected an administrative discharge board (ADB). On 26 June 2006, the ADB found misconduct and recommended your discharge with an Other Than Honorable (OTH) characterization of service. Your Commanding Officer (CO) forwarded the ADB's recommendation to the Separation Authority (SA). The SA accepted the recommendation and directed you be discharged with an OTH. You were so discharged on 20 September 2006. However, you were erroneously issued a DD Form 214 that states you were discharged with an Honorable characterization of service.

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 contention that a non-commissioned officer didn't like you, told you to stay home, and then charged you with UA. Since you had two NJPs within six months, you were discharged. You went on to serve in the National Guard after which you were diagnosed with a mental health condition. For purposes of clemency and equity consideration, the Board considered the evidence you provided in support of your application.

As part of the Board review process, a licensed clinical psychologist (Ph.D.) reviewed your contentions and the available records, and issued an AO dated 15 November 2024. The Ph.D. stated in pertinent part:

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 no medical evidence in support of his claims. 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 Ph.D. 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."

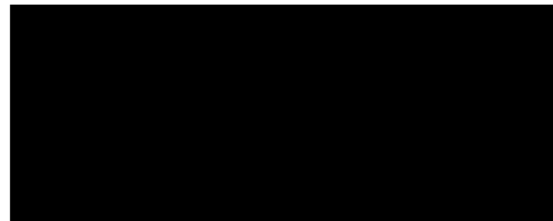
After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your NJPs, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and found that your conduct showed a complete disregard for military authority and regulations. Further, the Board concurred with the AO and determined there is insufficient evidence to attribute your misconduct to a mental health condition. As explained in the AO, you have provided no medical evidence in support of your claims. Furthermore, the Board noted you provided no evidence, other than your statement, to substantiate your contention that you were treated unfairly. The Board observed that you were given an opportunity to correct your conduct deficiencies but chose to continue to commit misconduct; which led to your OTH discharge. Finally, the Board considered you were erroneously given an Honorable discharge.

As a result, the Board concluded your conduct constituted a significant departure from that expected of a service member and continues to warrant an OTH characterization¹. 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 equity². 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,

2/4/2025



¹ The Board determined your conduct still merits an OTH characterization despite the erroneous Honorable characterization of service indicated on your DD Form 214.

² Board policy prohibits changing a record in a manner that will negatively affect a Petitioner. Therefore, your assigned characterization of service on your DD Form 214 remains uncorrected. This error likely benefitted you in determining your Department of Veterans Affairs benefits eligibility and eliminated any claim of injustice or inequity in your case.