



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

██████████
Docket No. 6996-24
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 limitations 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 22 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)/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 an advisory opinion (AO) from a qualified mental health professional; dated 22 October 2024. Although you were provided an opportunity to comment on the AO, you chose not to do so.

You enlisted in the Navy and commenced a period of active duty on 3 October 1977. On 17 January 1978, you were in an unauthorized absence (UA) status for 4 hours and 40 minutes. On 17 September 1978, you commenced on a period of UA that lasted until your surrender on 22 June 1979. On 16 August 1979, you went into a UA status that lasted until 18 August 1979. Between 16 October 1979 and 16 June 1981, you had five more periods of extended UAs. On 3 August 1981, a special court-martial (SPCM) convicted you of eight specifications of UA totaling 739 days. As a result, you were sentenced to confinement for two months, forfeiture of pay, and a Bad Conduct Discharge (BCD). After completion of all levels of review, you were so discharged on 11 January 1983.

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 and contention that you incurred mental health concerns (PTSD) due to a head injury incurred during military service, you did not receive proper care, and your UAs were due to your head injury. 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, a qualified mental health professional reviewed your request and provided the Board with an AO. The mental health professional stated in pertinent part:

That there is no evidence that Petitioner 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. Throughout his disciplinary processing, there were no concerns raised of a mental health condition that would have warranted a referral for evaluation. He has provided no medical evidence in support of his claims. Unfortunately, his personal statement is not sufficiently detailed to establish clinical symptoms in service or provide a nexus with his misconduct, particularly given his in-service statement. Additional records (e.g., post service mental health records describing the Petitioner's diagnosis, symptoms, and their specific link to his misconduct) may aid in rendering an alternate opinion.

The AO concluded, "it is my clinical opinion that there is insufficient evidence of a diagnosis of PTSD or another mental health condition that may be attributed to military service or a head injury incurred in military service. There is insufficient evidence to attribute his misconduct to PTSD or another mental health condition."

After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined your misconduct, as evidenced by your SPCM, outweighed the potential 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 noted you were provided multiple opportunities to correct your conduct deficiencies but chose to continue to commit misconduct, which led to your BCD. Further, the Board concurred with the AO that there is insufficient evidence to attribute your misconduct to PTSD or another mental health condition. As explained in the AO, there is no evidence you were diagnosed with a mental health condition in military service or that you exhibited any psychological symptoms or behavioral changes indicative of a diagnosable mental health condition. Throughout your disciplinary processing, there were no concerns raised of a mental health condition that would have warranted a referral for evaluation, and you provided no medical evidence in support of your claims. 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. Finally, the Board noted that you provided no evidence, other than your statements, to substantiate your contentions.

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 and discipline clearly merited your

discharge. 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. 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,

2/14/2025

