



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

██████████  
Docket No. 7156-24  
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 21 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). The Board also considered the advisory opinion (AO) furnished by a qualified mental health professional and your response to the AO.

You enlisted in the Navy and commenced active duty on 16 March 1992. On 23 February 1993, you received non-judicial punishment (NJP) for disrespect toward a superior commissioned officer. 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 14 September 1993, you were arrested by naval station police after becoming belligerent and uncooperative after being asked to show proper identification. Shortly thereafter, on 19 September 1993, you commenced a period of unauthorized absence (UA) that ended with your surrender on 21 September 1993. On 5 October

1993, you received NJP for the previously stated period of UA, drunk and disorderly conduct, and communicating a threat to a naval station police officer.

On 17 November 1993, you were subjected to a Drug and Alcohol evaluation resulting from your arrest. The evaluation noted the 14 September 1993 incident was your first alcohol-related offense and appeared isolated. You were recommended for immediate alcohol abuse counseling; with “fair potential” for further service. On 20 December 1993, you were notified of administrative separation processing by reason of misconduct due to commission of a serious offense. You consulted with counsel and, after waiving your remaining rights, your commanding officer recommended your discharge with an Other Than Honorable (OTH) characterization of service. You were so discharged on 28 January 1994.

Post-discharge, you applied to the Naval Discharge Review Board (NDRB) for a discharge upgrade. The NDRB denied your request for an upgrade, on 15 February 2001, based on their determination that your discharge was proper as issued.

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 characterization of service and change your separation code and narrative reason for separation. You contend that you were diagnosed with PTSD (with depressive and anxious features) which is at least as likely as not related to your military service, that your PTSD is the result of stressors that occurred during military service, including racism and homophobia, and that you began experiencing symptoms of PTSD and depression during military service. You further contended your PTSD excuses, mitigates, and outweighs the misconduct that led to your discharge. For purposes of clemency and equity consideration, the Board considered the evidence you provided in support of your application; including your legal brief with exhibits.

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 20 November 2024. The AO noted in pertinent part:

There is evidence that the Petitioner was diagnosed with a mental health condition during his military service. It appears as though the Petitioner came into service with significant history of depression and self-harm. Additionally, he exhibited symptoms and behaviors consistent with Personality Disorder with Narcissistic and Borderline features. It is possible that depressive symptoms contributed to periods of UA and poor performance, however the nature and pervasiveness of his disrespect toward superiors is more consistent with his diagnosis of personality disorder. Although he verbalized symptoms of PTSD in post-service mental health encounters, the purported trauma does not appear to meet the criteria of exposure to actual or threatened death, serious injury, or sexual violence as per DSM-V criteria. 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 that there is sufficient evidence of a mental health condition (Depression) that may have been worsened by military service. There is insufficient evidence to attribute all of his misconduct to a mental health condition.”

In response to the AO, you submitted additional supporting documentation that provided clarification of the circumstances of your case. After reviewing your rebuttal evidence, the AO remained unchanged.

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 NJP’s 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 additionally noted that you were given opportunities to address your conduct issues, but you continued to commit misconduct; which led to your unfavorable characterization of service. 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. Additionally, the Board concurred with the AO and determined that, although there is sufficient evidence of a mental health condition that may have been worsened by your military service, there is insufficient evidence to attribute all of your misconduct to a mental health condition. As the AO noted, it appears that you came into service with significant history of depression and self-harm. You also exhibited symptoms and behaviors consistent with Personality Disorder and, although it is possible depressive symptoms contributed to your UA and poor performance, the nature and pervasiveness of your disrespect is more consistent with a diagnosis of Personality Disorder than depression. The Board further agreed that additional records, as detailed above, would aid in rendering an alternate opinion. 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 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. 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, \_\_\_\_\_

2/24/2025



Executive Director

Signed by: \_\_\_\_\_