



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

██████████
Docket No. 7185-24
Ref: Signature Date

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Dear ██████████

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 12 November 2024. Although you were provided an opportunity to comment on the AO, you chose not to do so.

You entered active duty with the Navy on 21 October 1992. On 12 November 1992, you received non-judicial punishment (NJP) for willfully disobeying a lawful order from a commissioned officer. On 29 March 1993, you were diagnosed with an Adjustment Disorder, marital problems, and a borderline personality disorder. You were returned to full duty and recommended to outpatient treatment. On 9 April 1993, your personality disorder diagnosis was confirmed and you were recommended for administrative separation. On 17 April 1993, you were formerly counseled on being diagnosed with a personality disorder and the possibility

of being processed for administrative separation. On 19 May 1993, you were again recommended for administrative separation due to your personality disorder. Consequently, you were notified of pending administrative separation action by reason of misconduct due to commission of a serious offense and convenience of the government due to your personality disorder. After you waived your rights, your commanding officer (CO) forwarded your package to the separation authority (SA) recommending your discharge with a Type Warranted by Service Record (TWSR) characterization of service. The SA approved the CO's recommendation and you were so discharged with a General (Under Honorable Condition) (GEN) characterization of service on 14 July 1993.

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 to General (Under Honorable Conditions) or Honorable and contentions that you incurred mental health concerns during military service and you are currently attending classes while incarcerated. For purposes of clemency and equity consideration, the Board considered the evidence you provided in support of your application.

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 Petitioner was appropriately referred for psychological evaluation during his enlistment and properly evaluated during an inpatient hospitalization. His mental health diagnoses were based on observed behaviors and performance during his period of service, the information he chose to disclose, and the psychological evaluation performed by the mental health clinician. A personality disorder diagnosis is pre-existing to military service by definition, and indicates lifelong characterological traits unsuitable for military service, since they are not typically amenable to treatment within the operational requirements of Naval Service. It is difficult to attribute his misconduct to mental health concerns incurred during military service, given preservice behavior that appears to have continued in service. 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 in-service evidence of mental health concerns that may be attributed to military service. There is insufficient evidence to attribute his misconduct to mental health conditions incurred in military service."

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 NJP and personality disorder diagnosis, outweighed the potential mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the likely negative impact your conduct had on the good order and discipline of your command. Further, the Board concurred with AO that there is insufficient evidence to attribute your misconduct to a mental health conditions incurred in military service. As pointed out in the AO, you were appropriately

referred for psychological evaluation during your enlistment and properly evaluated during an inpatient hospitalization. Your mental health diagnoses were based on observed behaviors and performance during your period of service, the information you chose to disclose, and the psychological evaluation performed by the mental health clinician. Finally, the Board noted your final conduct average was insufficient to qualify for an Honorable characterization of service.

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.

Regarding your request for a discharge upgrade, the Board noted that you requested an upgrade to General (Under Honorable Conditions). As explained above, you were assigned a General (Under Honorable Conditions) characterization of service upon your discharge. Based on your assigned characterization of service, the Board believes you are likely eligible for Department of Veterans Affairs (VA) benefits. You are encouraged to contact your nearest VA office to determine your eligibility.

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

