



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

Docket No. 7225-24
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 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 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 (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 afforded an opportunity to submit an AO rebuttal, you chose not to do so.

You enlisted in the Navy and began a period of active duty on 17 September 1992. On 8 April 1994, you commenced a period of unauthorized absence (UA) that concluded upon your surrender to military authorities on 11 April 1994; a period totaling three days. On 22 September 1994, you received non-judicial punishment (NJP) for a period of unauthorized absence (UA) totaling seven days. Additionally, you were issued an administrative remarks (Page 13) retention warning formally counseling you concerning deficiencies in your performance and conduct. The Page 13 expressly warned you that any further deficiencies in your performance and/or conduct may result in disciplinary action and in processing for administrative separation. On 30 March 1995, you received your second NJP for three

specifications of UA totaling 43 days and two specifications of UA from your appointed place of duty.

Consequently, you were notified that you were being recommended for administrative discharge from the Navy by reason of misconduct due to commission of a serious offense. You waived your right to consult with counsel and present your case to an administrative discharge board. The commanding officer forwarded your administrative separation package to the separation authority recommending your administrative discharge from the Navy by reason of misconduct due to commission of a serious offense with an Other Than Honorable (OTH) characterization of service. The separation authority approved the recommendation and you were so discharged on 26 April 1995.

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 character of service to have access to all Department of Veterans Affairs (VA) benefits and your contentions that: (1) you were diagnosed with borderline psychiatric disorder and believe that this condition contributed to your thoughts of suicide and drug use at the time, (2) your condition was the contributing factor that ultimately caused your OTH discharge from the Navy, and (3) after going through therapy sessions, you realized that your issues were likely caused by your psychiatric condition. You assert that through learning of ways to deal with what life throws at a person you were able to overcome the self-sabotaging habits you exhibited after enlisted. 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 contentions and the available records and provided the Board with an AO on 16 November 2024. The AO 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. Although SI noted on separation physical and hospitalization noted, there are no medical records available in order to review the possible connection between mental health issues and misconduct. 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 AO 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 your 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 concluded your misconduct showed a complete disregard for military authority and regulations. The Board also considered the negative impact your conduct likely had on the good order and discipline of your command. Further, the Board concurred with the AO that there is insufficient evidence of a mental health condition that may be attributed to military service and there is insufficient evidence to attribute your misconduct to a mental health condition. As the AO explained, your personal statement is not sufficiently detailed to establish clinical symptoms or provide a nexus with your request. Further, the Board agreed there is no evidence that you were diagnosed with a mental health condition during your military service or that you exhibited any psychological symptoms or behavioral changes indicative of a mental health condition. 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 otherwise not be held accountable for your actions. Finally, absent a material error or injustice, the Board declined to summarily upgrade a discharge solely for the purpose of facilitating veterans' benefits or enhancing educational or employment opportunities.

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 characterization. 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 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,

2/7/2025

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Executive Director

Signed by: ■