



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

██████████  
Docket No. 7233-24  
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 3 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.

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 Navy and commenced active duty on 16 July 2004. In January 2005, you were referred for medical evaluation following self-mutilating behavior. Your cuts were deemed superficial and bandaged. You were instructed to return to medical if you experience suicidal ideation.

In March 2005, you were hospitalized for two days following a suicide attempt by drug overdose. At that time, you admitted to a prior suicide attempt at age 17 and a history of self-mutilation from age 13 to 17. You were diagnosed with Alcohol Abuse, Marijuana Abuse, and Personality Disorder, Not Otherwise Specified, with borderline and antisocial traits.

On 27 June 2005, you commenced a period of unauthorized absence (UA) ended by your surrender on 25 July 2005. Subsequently, you were seen by the psychologist on board the ██████████ who diagnosed you with Major Depressive Disorder, single moderate episode, and Borderline Personality Disorder.

On 8 August 2005, you were notified of administrative separation processing by reason of Convenience of the Government for Personality Disorder and Misconduct for Commission of a Serious Offense. You waived all rights in the process, including your rights to consult with counsel and request an administrative discharge board, but for the right to obtain copies of documents used in the separation process.

On 10 August 2005, you received non-judicial punishment (NJP) for UA on 24 June 2005 and between 27 June and 25 July 2005, and for two specifications of insubordinate conduct.

On 31 August 2005, your Commanding Officer recommended your discharge, with an Other than Honorable (OTH) characterization of service for both Convenience of the Government and Misconduct. On 15 September 2005, the separation authority approved your discharge based on commission of a serious offense and directed your discharge with an OTH. You were so discharged on 20 September 2005.

Post-discharge, you applied to the Naval Discharge Review Board (NDRB) for a discharge upgrade. The NDRB denied your request for an upgrade, on 22 April 2021, 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 for a discharge upgrade. Additionally, you request that the Secretary of the Navy (SECNAV) direct the NDRB to conduct a personal appearance for your case or that this Board grant you a personal appearance in a manner consistent with the procedures and standards of the NDRB. You contend that 1) your mental health caused your alleged misconduct and your discharge should be upgraded accordingly, in addition to granting any other appropriate relief, 2) your request for a personal appearance was disregarded by the NDRB despite having been specifically requested in your application and reiterated via letter by your legal counsel, and despite your counsel having responded to all correspondence from the NDRB in a timely fashion, 3) because your discharge was over 15 years old at the time of your application to the NDRB, you were precluded from reapplying to that board, and 4) that your mental health, including anxiety, depression, self-harm, suicidal ideations, and bipolar disorder, cause your alleged misconduct.

For purposes of clemency and equity consideration, the Board considered the evidence you provided, including documents related to your NDRB application, correspondence between your counsel and the NDRB, the NDRB decision document, and medical records.

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 5 November 2024. The AO noted in pertinent part:

Petitioner was appropriately referred for psychological evaluation during his enlistment and properly evaluated, including during an inpatient hospitalization. His personality disorder diagnosis was 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.

In addition to the personality disorder, he was also diagnosed with a depressive disorder. Temporally remote to his military service, he has been diagnosed with bipolar disorder by civilian providers. It is possible that symptoms identified as depression in service may have been re-conceptualized as bipolar disorder with the passage of time and increased understanding.

While the Petitioner was reporting additional depression symptoms in service, his in service misconduct appears to be consistent with his diagnosed personality disorder. 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 a mental health condition that may be attributed to military service. There is insufficient evidence to attribute his misconduct to a mental health condition, other than personality disorder."

In response to the AO, you submitted additional arguments in support 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, outweighed these mitigating factors. In making this finding, the Board considered the likely negative impact your repeated misconduct had on the good order and discipline of your command. Additionally, the Board concurred with the AO and determined that, although there is in-service evidence of a mental health condition that may be attributed to military service, there is insufficient evidence to attribute your misconduct to a mental health condition other than personality disorder. Lastly, the Board agreed that additional records, as detailed above, would aid in rendering an alternate opinion.

Further, in reviewing your case, the Board also considered that you, more likely than not, fraudulently enlisted in Navy. The Board noted that you admitted to an extensive mental health history of self-mutilation from age 13 and a suicide attempt at age 17. In the Board's opinion, your failure to disclose your service disqualifying mental health history as part of your enlistment process allowed you to unlawfully enter the Navy. Therefore, the Board was not persuaded that an injustice exists in your case based on your mental health condition.

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. 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 that SECNAV direct the NDRB to grant a personal appearance in your case, the Board determined it lacks the statutory authority to grant your request<sup>1</sup>. The Board determined your request does not involve a military record and falls outside the purview of this Board. Therefore, the Board took no action on this aspect of your application<sup>2</sup>.

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,

1/17/2025

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<sup>1</sup> Title 10, U.S. Code Section 1552 gives the Secretary of the Navy authority to “correct any military record” of the Secretary’s department when necessary to correct an error or remove an injustice.

<sup>2</sup> However, the Board did consider your alternative request for a personal appearance before this Board and determined it was deemed unnecessary since it would not materially add to their understanding of the issues involved.