



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

██████████
Docket No. 7253-24
Ref: Signature Date

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Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to Title 10, United States Code, Section 1552. 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.

Because your application was submitted with new evidence not previously considered, the Board found it in the interest of justice to review your application. A three-member panel of the Board, sitting in executive session on 17 January 2025, has carefully examined your current request. 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 the 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 to the 25 August 2017 guidance from the Office of the Under Secretary of Defense for Personnel and Readiness (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) of a qualified mental health provider; which was previously provided to you. Although you were afforded an opportunity to submit a rebuttal, you chose not to do so.

The Board determined that your personal appearance, with or without counsel, would not materially add to the understanding of the issues involved. Therefore, the Board determined a personal appearance was not necessary and considered your case based on evidence of record.

You have previously applied to the Board on five occasions. Your initial request was considered on 17 July 2001 in Docket Number 1630-01, wherein you primarily contended that your service was not dishonorable and that you were “tricked” into signing documentation for an “early out.” The Board weighed all potentially mitigating factors at that time, to include your youth and your contention that you should have been issued a better discharge; however, the Board found that

the factors and contentions you submitted for consideration were not sufficient to warrant recharacterization. Additionally requests for reconsideration in 2005, 2009, 2011, and 2012, were denied following examination of any new evidence you had submitted. The summary of your Navy service is substantially unchanged from that originally addressed in the Board's initial decision.

The Board carefully considered all potentially mitigating factors to determine, upon reconsideration, whether the interests of justice warrant relief in your case in accordance with the Wilkie, Kurta, and Hagel Memos. These included, but were not limited to, your desire to upgrade your discharge and to receive "100% disability for mental and physical injuries received while in the military." You contend that you were wrongfully discharged from the Navy due to mental and physical problems without being offered any help or means to appeal, you have struggled to make a living in the years since your discharge, your misconduct was attributable to your experience of stress and fights with others which rendered it difficult to control yourself, and your feeling that you were "manipulated in the process of being discharged." For purposes of clemency and equity consideration, the Board considered the evidence you submitted in support of your application.

Because you contend that a mental health condition may have affected the circumstances of your discharge, the Board also considered the AO. The AO stated in pertinent part:

There is no evidence that he 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, available records are not sufficiently detailed to establish clinical symptoms in service or provide a nexus with his misconduct. 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 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 these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your five non-judicial punishments and special court-martial conviction, 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 observed you were given multiple opportunities to correct your conduct deficiencies and chose to continue to commit misconduct; which led to your Other Than Honorable (OTH) discharge. 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. 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 insufficient evidence to attribute your misconduct to a mental health condition. Consequently, 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.

With respect to your contention that you were tricked into an early out or into “accepting” an administrative discharge, the Board found no evidence of error or injustice in the due process you were afforded during your separation proceedings; rather, your records reflect that you fully availed yourself of, and were provided with, the full scope of regulatory due process provided for within applicable Department of the Navy regulations. Moreover, the Board found that you were processed for administrative separation under an involuntary basis for discharge; as such, it would not logically follow that you could have been tricked into accepting an involuntary discharge. Therefore, the Board determined you were properly processed for your misconduct and found no basis to change your narrative reason for separation¹.

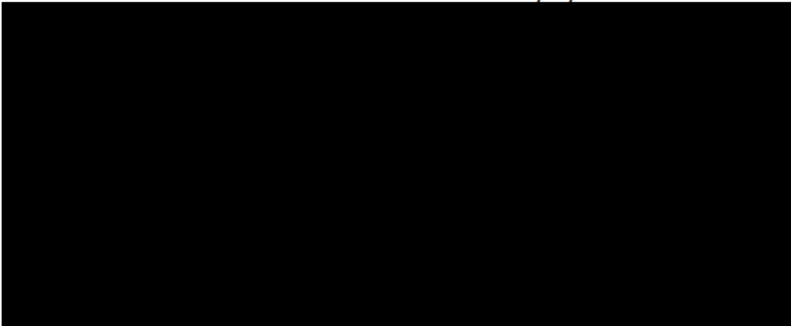
As a result, the Board concluded your conduct constituted a significant departure from that expected of a service member and continues to warrant an OTH characterization. While the Board carefully considered the evidence you submitted in mitigation, even in light of the Kurta, Hagel, and Wilkie Memos 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.

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.

In the absence of sufficient new evidence for reconsideration, the decision of the Board is final, and your only recourse would be to seek relief, at no cost to the Board, from a court of appropriate jurisdiction.

Sincerely,

2/10/2025



¹ To the extent that you desire to receive veterans’ benefits for purported physical and/or mental health disabilities, the Board noted that such matters are solely within the cognizance of the Department of Veterans Affairs.