



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

██████████  
Docket No. 7266-24

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 24 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). Additionally, the Board also considered the advisory opinion (AO) furnished by a qualified mental health provider. Although you were provided an opportunity to respond to the AO, you chose not to do so.

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 took your oath of office following graduation from ██████████ and commissioned as an Ensign on or about 15 May 1986. You promoted to the grade/rank of Lieutenant on 1 September 1990.

At the end of a brief inpatient hospitalization, a Navy Medical Officer (MO) diagnosed you with a depressive disorder, not otherwise specified (recurrent brief depression, and a narcissistic personality disorder. The MO noted in his narrative summary:

The patient's most recent severe depressive period was precipitated by his admission of guilt to charges of conduct unbecoming an officer on the day of admission. Specifically, the patient admitted to flirting with a Navy enlisted female on the Flight Line at ██████████ on 23 May 1993, then suggesting that she masturbate him, which she did willingly. He also masturbated to the point of ejaculation before leaving. After telling his parents about his incident on the telephone, he decided to call the female Airman to apologize the following day. The [NIS] apparently audiotaped his telephone apology and instituted an investigation, resulting in the patient's being questioned approximately three days prior to this admission. Apparently unaware of the audiotaped phone conversation, the patient adamantly denied the charges at that time. However, again at the urging of his parents, the patient returned to his Executive Officer on the day of admission to admit his guilt. The patient was then referred to his Flight Surgeon for further evaluation of his mood, which resulted in his emergency referral to this facility and his admission to the Mental Health Ward.

On or about 22 November 1994, you tendered your unqualified resignation for the good of the naval service in lieu of trial by court-martial for certain substantiated misconduct involving: (a) making a false official statement to an NCIS agent during the initial stages of an investigation, (b) fraternization with an enlisted service member, and (c) two separate specifications of conduct unbecoming an officer and a gentleman. In your resignation/separation request you admitted your guilt to certain offenses as charged. Your charged misconduct specifically included: (a) making sexually suggestive comments toward a female petty officer, (b) exposing yourself and masturbating in front of the female petty officer, and (c) directing her to observe and assist you in masturbating. All of your misconduct occurred on the transient flight line of ██████████ while the female petty officer was servicing your aircraft prior to a departing flight.

On 4 January 1995, the Chief of Naval Personnel (CNP) recommended to the Assistant Secretary of the Navy for Manpower and Reserve Affairs (ASN (M&RA)) that your resignation request be approved and that you be separated with an Other Than Honorable conditions (OTH) discharge characterization. Additionally, CNP recommend that ASN (M&RA) also approve the recoupment of the remaining balance of your aviation continuation pay. On 20 January 1995, ASN (M&RA) approved CNP's recommendations. Ultimately, on 28 February 1995, you were discharged from the Navy for misconduct in lieu of trial by court-martial with an OTH characterization of service at the rank/grade of O-3.

The Board carefully considered all potentially mitigating factors to determine whether the interests of justice warrant relief in your case in accordance with the Hagel, Kurta, and Wilkie Memos. These included, but were not limited to, your desire for a discharge upgrade and contention that: (a) at the time of your discharge you suffered from PTSD, (b) you feel that your

wartime service (highly decorated aviator during ██████████) should allow for reconsideration of record to allow you to receive veterans benefits including healthcare, (c) your post-service conduct has been nothing short of outstanding, (d) you are a viable member of society who worked hard and raised children with ethical values and high morals, and you gave back to society in every avenue available including time and philanthropic support, (e) you also gave time to the Department of Veterans Affairs and helped causes that contributed to veterans recover and success, and (f) you ask for your deepest understanding and take your full lifetime achievements including being a heroic wartime veteran who bravely served his country and as a civilian who was a productive member in society and the highest moral civic affairs. For purposes of clemency and equity consideration, the Board considered the totality of the evidence you provided in support of your application.

A licensed clinical psychologist (Ph.D.) reviewed your contentions and the available records, and issued an AO dated 2 December 2024. As part of the Board's review, the Board considered the AO. The AO stated in pertinent part:

There is evidence that the Petitioner was diagnosed with depression, PTSD, Narcissistic and Dependent personality features, and suicidal ideation during his military service. His depression worsened following misconduct involving conduct unbecoming of an officer. Although both depression and PTSD can result in poor judgment as a symptom, the nature and severity of the Petitioner's misconduct were more likely a result of his characterological features.

The AO concluded, "it is my clinical opinion that there is sufficient 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. In accordance with the Hagel, Kurta, and Wilkie Memos, the Board gave liberal and special consideration to your record of service and your contentions about any traumatic or stressful events you experienced and their possible adverse impact on your service. However, the Board concluded that there was no convincing evidence of any nexus between any mental health conditions and/or related symptoms and your misconduct and determined that there was insufficient evidence to support the argument that any such mental health conditions mitigated the misconduct that formed the basis of your discharge. As a result, the Board concluded that your misconduct was not due to mental health-related conditions or symptoms. Additionally, even if the Board assumed that your misconduct was somehow attributable to any mental health conditions, the Board concluded that the severity of your misconduct outweighed any and all mitigation offered by such mental health conditions. The Board determined the record reflected that your misconduct was intentional and willful and demonstrated you were unfit for further service. Moreover, the Board concluded that your intentional misconduct including making a false official statement, masturbating in front of an enlisted female, and directing her to observe you and assist you in masturbating were not the types of misconduct that would be excused or mitigated by mental health conditions even with liberal consideration. The Board also 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.

The Board did not believe that your record was otherwise so meritorious as to deserve a discharge upgrade. The Board concluded that significant negative aspects of your conduct and/or performance greatly outweighed any positive aspects of your military record. The Board determined that characterization under OTH conditions is appropriate when the basis for separation is the commission of an act or acts constituting a significant departure from the conduct expected of a Naval Officer. Moreover, 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 determined that there was no impropriety or inequity in your discharge and concluded that your misconduct and disregard for good order in 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,

2/12/2025

Executive Director

Signed by: