



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

Docket No. 7388-24
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 13 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, 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 the advisory opinion (AO) furnished by a qualified mental health professional. 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 enlisted in the Navy and commenced active duty on 9 June 1978. On 15 November 1978, you were recommended for administrative separation after being diagnosed with personality disorder and immature personality with paranoid features. During your mental health evaluation,

you disclosed that you were “fed up with military life,” felt you had been discriminated against, and had recently discovered your girlfriend gave birth to your child. On 31 December 1978, you commenced a period of unauthorized absence (UA) that ended in your apprehension by civil authorities on 31 July 1980.

On 19 September 1980, you were found guilty at Special Court Martial (SPCM) of UA from 31 December 1978 to 31 July 1980. You were sentenced to forfeitures, confinement at hard labor, and a Bad Conduct Discharge (BCD). Subsequently, the findings and sentence in your SPCM were affirmed and you were issued a BCD on 8 January 1982.

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 change your discharge characterization of service to qualify for veterans’ benefits and your contentions that you became depressed due to migraine headaches and your surroundings, you asked to be seen by a mental health professional, and you were referred for an administrative separation, . For purposes of clemency and equity consideration, the Board noted you provided excerpts from your military medical records but no supporting documentation describing post-service accomplishments or advocacy letters.

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 15 November 2024. The AO stated in pertinent part:

Petitioner contends he incurred mental health concerns during military service, which may have contributed to the circumstances of his discharge.

In June 1978, the Petitioner sought medical treatment, complaining that his “eyes are sensitive to light.” In November 1978, he requested a mental health evaluation “due to problem c [with] nerves concerning military life.” He was evaluated by a military psychiatrist who diagnosed with Personality Disorder, immature personality with paranoid features and recommended separation.

From December 1978 to July 1980, the Petitioner was on unauthorized absence (UA), until apprehended by civilian authorities on an unrelated traffic violation. In August 1980, the Petitioner returned for medical treatment of his eyes, noting that he had been seeing spots for two years “while working outside, or while exposed to a lot of light.” In September 1980, he was convicted by special court martial of 578 days of UA. In January 1982, he received a bad conduct discharge. He denied mental health symptoms during his separation physical.

Petitioner contended he incurred mental health concerns due to migraine headaches and eye sensitivity.

Petitioner was appropriately referred for psychological evaluation and properly evaluated during his enlistment. 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. There is no evidence of another mental health diagnosis, and he has provided no medical evidence to support his claims. His misconduct appears to be consistent with his diagnosed personality disorder, rather than evidence of another mental health condition incurred in or exacerbated by military service.

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, other than personality disorder.”

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 SPCM, outweighed these 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. Additionally, the Board concurred with the AO and determined 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, other than personality disorder. 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 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 a BCD. 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,

2/4/2025

