



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

██████████
Docket No. 7508-24
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.

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 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 the Kurta Memo, the 13 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). As part of the Board's review, a qualified mental health professional reviewed your request and provided the Board with an Advisory Opinion (AO). Although you were afforded an opportunity to submit a rebuttal, you chose not to do so.

You enlisted in the U.S. Marine Corps and began a period of active duty on 27 January 1991. Between 13 March 1992 and 27 April 1993, you were counselled for loss of government property, false official statement, frequent involvement of a discreditable nature, uttering bad checks, loss of military ID (identification) card, and financial irresponsibility. During that period, on 5 June 1992, you received your first nonjudicial punishment (NJP) for uttering bad checks totaling \$1,500. Further, on 27 August 1992, you were convicted by a Summary Court-Martial (SCM) of two specifications of breaking restriction and sentenced to restriction for 60 days and reduction in rank to E-1.

On 29 July 1995, you were convicted by a special court-martial (SPCM) of three specifications of defrauding the government and sentenced to be confined for six months, to forfeit \$559.00 pay per month for six months, and to be reduced in rank to E-1. On 14 February 1996, you received a second NJP for two specifications of violating a general order. Consequently, you were notified of your pending administrative processing by reason of pattern of misconduct (POM), at which time you waived your rights to consult with counsel and present your case to an administrative discharge board. On 11 March 1996, your commanding officer forwarded your administrative discharge package to the separation authority recommended you be discharged with an Other Than Honorable (OTH) characterization of service adding, "...despite efforts to encourage him toward honorable, productive service, he has responded with further acts of misconduct. By his actions, he has demonstrated that he has absolutely no potential for further military service." Ultimately, the separation authority directed you be discharged with an OTH characterization of service and you were so discharged on 26 April 1996.

Post-discharge, you applied to the Naval Discharge Review Board (NDRB) for a discharge upgrade. The NDRB denied your request, on 22 December 1997, after determining your discharge was proper as issued.

The Board carefully considered all potentially mitigating factors to determine whether the interest 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 and your contentions that: (1) despite multiple awards, your service was marred by untreated PTSD, affecting your behavior, (2) the DOD's policy acknowledges PTSD's impact on conduct, applying liberal consideration to such cases, and (3) correcting your discharge will honor your service and allow access to vital medical veterans benefits. For purposes of clemency and equity consideration, the Board considered the evidence you submitted in support of your application.

Based on your assertions that you incurred mental health concerns during military service, which might have mitigated your discharge characterization of service, a qualified mental health professional reviewed your request for correction to your record and provided the Board with an AO on 26 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. He has provided post-service evidence of diagnoses of PTSD and MDD related to events occurring in childhood. Even if these conditions were worsened by military service, the nature and pervasiveness of his misconduct is not typically caused by someone suffering from a mental health condition. 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 a thorough review, the Board concluded the potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined your misconduct, as evidenced by your NJPs, SCM, and SPCM, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and concluded that it showed a complete disregard for military authorities and regulations. Additionally, the Board noted you were provided an opportunity to correct your conduct deficiencies during your service but continued to commit misconduct, which led to your OTH discharge. The Board also concurred with the AO that there is insufficient evidence to attribute your misconduct to a mental health condition. As the AO explained, your post-service diagnosis of PTSD and MDD (Major Depressive Disorder) is related to events occurring in childhood. Further, the Board determined that an Honorable discharge was appropriate only if the member's service was otherwise so meritorious that any other characterization of service would clearly be inappropriate. The Board concluded by opining that certain negative aspects of your conduct and/or performance outweighed the positive aspects of your military record, even under liberal consideration standards for mental health conditions, and that your current discharge characterization and no higher was appropriate. Therefore, the Board concluded that your discharge was proper and equitable under standards of law and discipline and that the discharge accurately reflects your conduct during your period of service. 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.

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. 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 the 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 is attached 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,

2/5/2025

the 1990s, the number of people in the United States who are 65 years of age and older has increased by 50 percent. The number of people 75 years of age and older has increased by 100 percent. The number of people 85 years of age and older has increased by 200 percent. The number of people 95 years of age and older has increased by 400 percent.