



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

[REDACTED]
Docket No. 7771-24
Ref: Signature Date

[REDACTED]
[REDACTED]
[REDACTED]

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 28 February 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 an advisory opinion (AO) furnished by 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 enlisted in the U.S. Navy and began a period of active duty service on 8 July 1982. Your enlistment physical examination, on 22 June 1982, and self-reported medical history both noted no psychiatric or neurologic conditions or symptoms.

On 2 July 1983, civilian authorities in ██████████ convicted you of marijuana possession. The Court sentenced you to pay a fine and court costs.

On 17 August 1983, you received non-judicial punishment (NJP) for the wrongful possession of a controlled substance (marijuana). You did not appeal your NJP. On the same day, your command issued you a "Page 13" retention warning (Page 13) documenting your "use of drugs." The Page 13 advised you that any further deficiencies in performance and/or conduct may result in disciplinary action and in processing for an administrative discharge.

On 15 October 1983, you commenced an unauthorized absence (UA) that terminated on 18 October 1983. On 8 December 1983, your command issued you a Page 13 documenting you obtaining services under false pretenses. The Page 13 advised you that any further deficiencies in performance and/or conduct may result in disciplinary action and in processing for an administrative discharge.

On 16 January 1984, you commenced a UA that terminated on 17 January 1984. On 13 April 1984, you were convicted at a Special Court-Martial (SPCM) for: (a) your 1-day UA, (b) disrespect toward a superior commissioned officer, and (c) willful disobedience of a superior commissioned officer. Your SPCM sentence included a reduction in rank to Seaman Apprentice (E-2), forfeitures of pay, and confinement for forty-five (45) days. On 7 June 1984, the Convening Authority (CA) approved the SPCM sentence.

On 28 June 1984, you received NJP for UA. You did not appeal your NJP. On the same day, your command issued you a Page 13. The Page 13 advised you that any further deficiencies in performance and/or conduct may result in disciplinary action and in processing for an administrative discharge.

On 30 November 1984, you received NJP for a breach of the peace, when you engaged in a fist fight, and for an assault when you bit another Sailor in the side with your teeth and scratching him in the face with his fingers. You did not appeal your NJP.

On 1 February 1985, you received NJP for a breach of the peace, larceny of \$426 from another Sailor, and an assault when you pinned another Sailor's head to the deck with your leg and hit the Sailor's head with your other leg. You did not appeal your NJP.

On 31 May 1985, you received NJP for the wrongful use of marijuana. You did not appeal your NJP.

On 2 July 1985, you were convicted at a General Court-Martial (GCM) of: (a) violating a lawful general regulation, (b) the unlawful entry into the armory on board the ██████████ and (c) the larceny of a .45 caliber pistol. You were sentenced to confinement for one (1) year, total forfeitures of pay and allowances, and a discharge from the U.S. Navy with a Bad Conduct Discharge (BCD).

On 7 November 1985, you waived clemency review of your GCM sentence. On 8 November 1985, the Convening Authority approved the GCM sentence and findings.

On 12 March 1986, your separation physical examination conducted in the brig noted no psychiatric or neurologic conditions or symptoms. Ultimately, upon the completion of GCM appellate review in your case, on 14 December 1988, you were discharged from the Navy with a BCD.

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 and contentions that: (a) you are asking this correction to be made because people are not exempt from making mistakes and this is what you feel was done to you - being wrongly accused of a crime you did not do, (b) you did not commit the act that you were accused of, (c) you made your plea at the time with a truthful mind and heart, and even had a witness to confirm everything you said was true, and yet you were still wrongly accused and charged, (d) you were sexually assaulted in the brig, (e) you have gone through life suppressing feeling and emotions; being treated like you weren't deserving to have the right to say, "I was in the US NAVY" yet, having children to care for and provide for, a wife to take care of, you struggled and had to overcome many obstacles that cost you a lot in life - PTSD from being abused in the military, two divorces, a car accident from being mentally drained that left me with bolt and nuts in my neck today, and my integrity - yet you are still here!, (f) what happened to you was very unsettling, and your life was forever changed due to the US Navy, (g) you would like this correction because those years were stripped of you by the US Navy as you couldn't nurture your children or be a responsible father and husband to your wife, and it will feel good knowing the wrong that was done to you will be corrected, as you were court-martialed for a crime you did not commit. 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 21 December 2024. As part of the Board's review, the Board considered the AO. The AO stated in pertinent part:

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

Petitioner did not submit any medical evidence in support of his claim.

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 no medical evidence in support of his claims. 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.

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. 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 that you suffered from any type of mental health condition while on active duty, or that any such mental health condition was related to or 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 unequivocally concluded that the severity of your cumulative misconduct far 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. The Board noted that your service record contained evidence of: one (1) civilian conviction, five separate (5) NJPs, three (3) Page 13 entries, one (1) special court-martial, and one (1) general court-martial. 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.

Additionally, the Board determined you did not provide credible and/or convincing evidence to substantiate or corroborate your evidentiary and legal/factual sufficiency contentions regarding your GCM offenses. The Board concluded you were found guilty of your serious GCM offenses because you were guilty beyond a reasonable doubt and was not willing to re-litigate well-settled facts that are no longer in dispute from a final GCM conviction occurring over thirty-six (36) years ago.

The Board noted that, although it cannot set aside a conviction, it might grant clemency in the form of changing a characterization of discharge, even one awarded by a court-martial. However, the Board concluded that despite your contentions this was not a case warranting any clemency as you were properly convicted at a GCM of serious misconduct. The Board determined that characterization with a BCD appropriate when the basis for discharge is the commission of an act or acts constituting a significant departure from the conduct expected of a Sailor.

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,

3/18/2025

