



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

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Docket No. 7825-24
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 31 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). The Board also considered the advisory opinion (AO) furnished by a qualified mental health professional and your response to the AO.

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 17 April 1985. After a period of continuous Honorable service, during which you served on the █ and received non-judicial punishment (NJP) for nineteen days of unauthorized absence (UA) and missing ship's movement, you reenlisted on 18 April 1989 and commenced a second period of active duty.

You joined the ■ for duty on 25 Dec 1989 and were advanced to SH2/E-5 on 18 July 1990. On 23 February 1992, you joined the ■ for duty. From 8 April 1992 to 22 May 1992, you were admitted to Naval Hospital ■ for in-patient alcohol rehabilitation. You were diagnosed Alcohol Dependent with a discharge prognosis of “fair.”

On 21 April 1993, you were issued an administrative remarks (Page 13) counseling concerning deficiencies in your performance and/or conduct, specifically disorderly conduct and a civilian alcohol-related incident. You were advised that any further deficiencies in your performance and/or conduct may result in disciplinary action and in processing for administrative discharge. On 23 April 1993, you attended a five-day relapse prevention workshop.

On 9 February 1994, you received NJP for failure to obey a lawful order, from both a commissioned officer and a senior petty officer, and for dishonorably failing to pay debts. On 22 April 1994, you received NJP for two specifications of dereliction in performance of duty for failure to properly account for inventory and failure to properly account for sales. On 26 May 1994, you received NJP for dereliction in performance of duty for willful failure to follow proper procedures while operating an elevator.

Consequently, you were notified of pending administrative separation processing with an Under Other Than Honorable conditions (OTH) discharge by reason of misconduct due to commission of a serious offense and pattern of misconduct. You waived your rights to consult counsel, submit a statement, or have your case heard by an administrative discharge board. The separation authority subsequently directed your discharge with an OTH characterization of service for pattern of misconduct and you were so discharged on 22 June 1994.

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 and receive the Kuwait Liberation Medal. You contend that your Division Officer mistreated you and sent you to NJP for unfounded reasons that were dismissed, you were discharged for going to NJP too many times in a short period, and that, post-discharge, you have not had legal trouble and have raised a daughter who serves in the Navy. For purposes of clemency and equity consideration, the Board considered your statement, psychologist letter, letter from the commanding officer of your first ship, letter from a coworker on your third ship, and copy of awards page you enclosed.

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 22 December 2024. The AO stated in pertinent part:

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

Petitioner submitted one character reference and a letter from a VA psychologist (July 2024) indicating that she has been treating the Petitioner for “trauma-related symptoms” since May 2024.

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 provided a letter from a psychologist noting treatment for depressive, anxiety, and trauma-like symptoms since May 2024; however, the letter does not describe the rationale for or the etiology of the diagnoses, and thus a nexus cannot be assumed between these and his in-service misconduct. 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.”

In response to the AO, you provided a personal statement that supplied additional clarification of the circumstances of your case. After reviewing your rebuttal evidence, the AO remained unchanged.

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 NJPs in your final enlistment, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your repeated misconduct and found that your conduct showed a complete disregard for military authority and regulations. The Board considered your contentions of malfeasance by your Division Officer and noted that, while you did have two cases of dismissed UA charges during your first enlistment, your OTH characterization of service was for your second enlistment and misconduct on a different ship. The Board further considered the letter from your coworker on your third ship that claimed your Division Officer ordered you to disobey regulations and implied that she misappropriated command ballcaps and CDs. The Board did not find the unsubstantiated allegations persuasive. The Board noted that you were given multiple opportunities to address your conduct issues but you continued to commit misconduct; which ultimately led to your 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. Finally, 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. As explained in the AO, the evidence you provided was insufficient to establish a nexus between your post-discharge diagnosis and in-service misconduct. 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.

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 and discipline clearly merited your discharge.

Regarding your request for the Kuwaiti Liberation Medal (KLM), your official service record does not contain the documentation required support your entitlement to this award and does not contain a copy of the awards/promotions page (NAVPERS 1070/604) you provided in your application. Additionally, the promotion dates indicated on the copy of the awards/promotions page you provided do not match the advancement dates in your official record; therefore the Board was unable to verify your entitlement to the KLM. Additionally, the Board took into consideration that 10 U.S.C. § 6249 states: "No medal, cross, or bar, or associated emblem or insignia may be awarded or presented to any person or to his representative if his service after he distinguished himself has not been honorable." Therefore, even if there was supporting evidence, based on your OTH discharge, the Board determined you are statutorily ineligible for the award.

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,

2/26/2025

