



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. 7973-24
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 5 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). The Board also considered the advisory opinion (AO) furnished by a qualified mental health professional. Although you were afforded an opportunity to submit an AO rebuttal, you chose not to do so.

You enlisted in the Navy and began a period of active duty on 30 August 2000. On 2 July 2002, you received non-judicial punishment (NJP) for assault, consummated by battery. Additionally, you were issued an administrative remarks (Page 13) retention warning formally counseling you concerning deficiencies in your performance and conduct as evidenced by your violation of Article 128, Uniform Code of Military Justice (UCMJ). The Page 13 expressly advised you that any further deficiencies in your performance and/or conduct may result in disciplinary action and in processing for administrative separation. On 6 February 2003, you commenced a period of unauthorized absence (UA) that subsequently concluded upon your surrender to military authorities on 3 March 2003: a period totaling 25 days. On 13 April 2003, you received your second NJP for the period of UA and missing ship's movement.

Consequently, you were notified that you were being recommended for administrative discharge from the Navy by reason of misconduct due to pattern of misconduct and commission of a serious offense. You were informed of the basis for this recommendation and that the least favorable characterization of service you may receive is Under Other Than Honorable (OTH) conditions. You waived your right to consult with counsel and to present your case to an administrative discharge board. The commanding officer (CO) forwarded your administrative separation package to the separation authority recommending your administrative discharge from the Navy. As part of the CO's recommendation, he stated in pertinent part:

[Petitioner] is either incapable of or simply unwilling to adhere to the rules and regulations of this command and the U.S. Navy. He is a negative influence on good order and discipline and has no potential for future service. I strongly recommend that [Petitioner] be separated from the naval service due a pattern of misconduct and that his characterization of service be Under Other Than Honorable.

The separation authority approved the recommendation, and you were so discharged on 27 May 2003. At the time of discharge, you were issued a Certificate of Release or Discharge from Active Duty (DD Form 214) that erroneously annotated your character of service as "Honorable."

On 5 June 2003, you were issued a Correction to DD Form 214, Certificate of Release or Discharge from Active Duty (DD Form 215) that corrected your character of service to read "Under Other Than Honorable Conditions vice Honorable." The DD Form 215 was mailed to your mailing address on file; which was the same mailing address as your DD Form 214.

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 upgrade your discharge character of service and contentions that: (1) you felt overwhelmed due to mental, emotional, and physical abuse, your mood changed, and you were having panic attacks, (2) you experienced emotional, manipulating, and rude insulting language, (3) you received an Honorable discharge during your out-processing and was not aware that your discharged was changed to an OTH until 23 May 2024, (4) you only had one offense during your service at your squadron; one offense does not qualify for a pattern of misconduct, and (5) the change in your character of service is an error and injustice. For purposes of clemency and equity consideration, the Board considered the documentation you provided in support of your application.

As part of the Board's review, a qualified mental health professional reviewed your contentions and the available records and provided the Board with an AO on 17 December 2024. The AO stated in pertinent part:

There is no evidence that he was diagnosed with a mental health condition in military service, or that he exhibited any psychological symptoms or behavioral changes indicative of a diagnosable mental health condition. Temporally remote to his military service, the Department of Veterans Affairs (VA) granted service connection for a mental health condition. Unfortunately, available records are not sufficiently detailed to provide a nexus with his misconduct. Additional records

(e.g., post service mental health records describing the Petitioner's diagnosis, symptoms, and their specific link to his misconduct) may aid in rendering an alternate opinion.

The AO concluded, "it is my clinical opinion that there is post-service evidence from the VA 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 your potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your NJPs, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and concluded your misconduct showed a complete disregard for military authority and regulations. Further, the Board concurred with the AO that, while there is post-service evidence from the VA of a mental health condition that may be attributed to military service, there is insufficient evidence to attribute your misconduct to a mental health condition. As the AO explained, the available records are not sufficiently detailed to provide a nexus with your misconduct. Further, the Board agreed there is no evidence that you were diagnosed with a mental health condition in military service or that you exhibited any psychological symptoms or behavioral changes indicative of a diagnosable mental health condition. Furthermore, the Board determined your Department of Veterans Affairs rating is too temporally remote from your military service. 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 otherwise not be held accountable for your actions. The Board observed that you were given an opportunity to correct your conduct deficiencies but chose to continue to commit misconduct, which 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, regarding your contention that you were unaware of your character of service at discharge, the Board noted you were informed and acknowledged that the least favorable character of service you may receive was an OTH discharge. Although your record incorrectly reflected your character of service as "Honorable," this error was corrected with the issuance of a DD Form 215 annotating your correct character of service as "Under Other Than Honorable Conditions." The Board, in its review, discerned no impropriety or inequity in your discharge based on this administrative error. Furthermore, the Board was not persuaded by the VA's decision to adjust your benefits based on your corrected DD Form 214 vice the originally issued erroneous version¹.

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. While the Board commends your post-discharge accomplishments and carefully

¹ The Board noted that it has no purview over the VA's decisions and, absent a material error or injustice, declined to summarily upgrade a discharge solely for the purpose of facilitating veterans' benefits, or enhancing educational or employment opportunities. In fact, due to the administrative error, the Board observed you were fortunate to receive VA benefits over the course of 20+ years despite possessing a characterization of service that typically does not qualify for such benefits. In the Board's opinion, this fact eradicates any injustice resulting from the administrative error.

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,

3/5/2025

