



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

██████████
Docket No. 8064-24
Ref: Signature Date

████████████████████
██████████████████
██████████████████

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 10 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, 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). 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 response to the AO, you chose not to do so.

You enlisted in the Navy and began a period of active duty on 19 September 2000. On 22 December 2001, you were subject to non-judicial punishment (NJP) for disobeying a lawful order. On 28 September 2004, you were recommended for administrative separation for pattern of misconduct¹. On 7 October 2004, your separation with an Other Than Honorable (OTH)

¹ The Board was unable to locate the service record documents that specified your misconduct. However, the Board relied on the presumption of regularity.

characterization of service was approved. However, on 26 October 2004, you commenced a period of unauthorized absence (UA) from which you never returned.

Unfortunately, some documents pertinent to your administrative separation are not in your official military personnel file (OMPF). Notwithstanding, the Board relies on a presumption of regularity to support the official actions of public officers and, in the absence of substantial evidence to the contrary, will presume that they have properly discharged their official duties. Your Certificate of Release or Discharge from Active Duty (DD Form 214), reveals that you were separated from the Navy on 6 January 2006² with an Other Than Honorable characterization of service, your narrative reason for separation is "Misconduct," your separation code is "HKA," and your reenlistment code is "RE-4."

Post-discharge, you applied to the Naval Discharge Review Board (NDRB) for a discharge upgrade. The NDRB denied your request for an upgrade, on 6 June 2017, based on their determination that 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) the stress of deployment post 9-1-1 contributed to your mental health concerns and alcohol abuse, (2) it also put your marriage in turmoil which ultimately ended in divorce, (3) while on deployment you found comfort and companionship from a female Sailor and, as a result of this fraternization, you were disciplined, reduced in rank, confined to the brig for 30 days, and discharged, (4) prior to this you were meritoriously advanced for graduating top of your class and received excellent evaluations, (5) at the end of deployment in Sep 04, you were separated from your command while in ██████████ and told to report to ██████████ for your final separation, (6) you attempted to turn in your records but were confronted by a Sailor who told you that you needed to shave or you would not be assisted, (7) you left the office and did not turn in your service record, (8) you never received your DD 214 or any benefits from your time enlisted, (9) years later, upon attempting to obtain your DD 214, you discovered the Navy never discharged you due to your not surrendering your records and had you listed as AWOL, (9) you regret your actions and are disappointed in how your naval career ended, and (10) you have been sober for 13 years, are married, have an amazing daughter, and a good career. 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 may have contributed to the circumstances of your separation, a qualified mental health professional reviewed your request for correction to your record and provided the Board with an AO. 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. He has provided no medical evidence in support of his claims. Unfortunately, his personal statement is

² You were separated in absentia

not sufficiently detailed to establish clinical symptoms in service or 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 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 these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined your misconduct, as evidenced by your NJP and statement, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the likely negative effect it had on the good order and discipline of your unit. Additionally, the Board concurred with the AO that there is insufficient evidence of a mental health condition that may be attributed to military service or your misconduct. As the AO explained, you have not provided any medical evidence in support of your claims. 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, which was terminated by your OTH.

While the Board carefully considered the evidence you submitted in mitigation and commends you on your commitment to sobriety, 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 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,

3/4/2025

