



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

██████████  
Docket No. 8073-24  
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 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.

You enlisted in the U.S. Navy and began a period of active duty service on 2 August 1982. Your pre-enlistment physical examination, on 21 November 1981, and self-reported medical history both noted no psychiatric or neurologic conditions, history, or symptoms.

On 11 June 1984, you received non-judicial punishment (NJP) for unauthorized absence (UA) and two (2) separate specifications of failing to obey a lawful order. You did not appeal your NJP.

On 10 September 1984, you received NJP for three (3) separate specifications of willfully failing to obey a lawful order. You did not appeal your NJP. The same day, your command issued you a "Page 13" retention warning (Page 13) documenting: (a) your inattention to detail and obvious lack of good military discipline, and (b) your inability to effectively carry out the orders of the officers and superiors appointed over you. The Page 13 advised you that any further deficiencies in your performance and/or conduct may result in disciplinary action and/or processing for administrative separation.

On 26 November 1984, you were convicted at a Summary Court-Martial for two (2) separate UA specifications. You were sentenced to forfeitures of pay and confinement at hard labor for twenty-five (25) days.

On 17 December 1984, your command notified you of administrative separation proceedings by reason of misconduct due to a pattern of misconduct. On 18 December 1984, you consulted with counsel and waived your rights to submit statements and to request a hearing before an administrative separation board.

On 18 January 1985, your commanding officer (CO) recommended to the Separation Authority (SA) that you receive an under Other Than Honorable conditions (OTH) characterization of service. In his recommendation the CO stated, in part:

In addition to the numerous military offenses for which he was punished at NJP and a Summary Court-Martial...twelve instances of specific counseling for at least seventeen infractions committed by [Petitioner] between September 1983 and May 1984. These infractions have ranged from repeated traffic citations and bad checks to improper wear of the Navy uniform, unauthorized absences, and disrespect to seniors. Because of [Petitioner's] extensive technical training and his inherent potential, he was given "the benefit of the doubt" on far too many occasions. After his second NJP, [Petitioner] was formally counselled and warned regarding the possible impact of his actions on retention in the naval service should he commit future infractions...Upon conclusion of [Petitioner's] third NJP, given his stated desire to be retained and in spite of ample justification for administrative separation at that time, I decided to extend him one more chance. He again became an unauthorized absentee in an attempt to flee punishment, stating that he would "not go to Correctional Custody." This necessitated his physical apprehension and return to the command by senior petty officers and military police. Accordingly, after such irresponsible and flagrant disregard for authority and Navy regulations, I referred these charges to a Summary Court-Martial and proceeded with administrative discharge procedures.

[Petitioner] has been a constant burden, and his actions have been counterproductive to the mission of my Command. What work he has performed has been negated by the exorbitant efforts expended by seniors in providing direction and counseling and by the discredit he has brought upon himself and the naval service.

[Petitioner's] flagrant disregard for military rules and regulations has manifested itself in conduct and attitude which is prejudicial to good order and discipline and which cannot continue to be tolerated. His frequent and continued infractions violate the basic principles of Navy pride and professionalism. Accordingly, I most strongly recommend that [Petitioner] be administratively discharged from the naval service under "Other Than Honorable" (OTH) conditions.

On 20 February 1985, the SA approved your discharge with an OTH character of service. Ultimately, on 25 February 1985, you were separated from the Navy by reason of misconduct with an OTH discharge characterization and were assigned an RE-4 reentry code.

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) your discharge was related to a psychiatric disorder with stressors linked to military service, and (b) you provided a "nexus letter" from a mental health provider and documentation of stressors on active duty. 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 3 January 2025. As part of the Board's review, the Board considered the AO. 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 a diagnosis of Psychotic Disorder and self-reported "Havana Syndrome" and PTSD. It is possible that the Petitioner had been suffering from some prodromal symptoms of a later psychotic disorder, however there is not enough evidence at this time to ascertain a nexus between his misconduct and any mental health condition that existed in service.

The AO concluded, "it is my clinical opinion that there is sufficient evidence of a temporally remote post-service mental health condition. 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 of any nexus between any purported mental health conditions and/or related symptoms and your misconduct and determined that there was insufficient evidence to support the argument that any such mental health conditions 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. 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 pattern of 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 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.

The Board observed that character of military service is based, in part, on conduct and overall trait averages which are computed from marks assigned during periodic evaluations. Your overall active duty trait average calculated from your available performance evaluations during your enlistment was approximately 2.15 in conduct. Navy regulations in place at the time of your discharge recommended a minimum trait average of 3.0 in conduct (proper military behavior), for a fully honorable characterization of service. The Board concluded that your cumulative misconduct was not minor in nature and that your conduct marks during your active duty career were a direct result of your serious misconduct and a failure to conform to basic military standards of good order and discipline, all of which further justified your OTH characterization.

The Board did not believe that your record was otherwise so meritorious as to deserve a discharge upgrade. The Board concluded that significant negative aspects of your conduct and/or performance greatly outweighed any positive aspects of your military record. The Board determined that characterization under OTH conditions is appropriate when the basis for separation 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

