



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. 8086-24
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 24 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). Additionally, the Board also considered an advisory opinion (AO) furnished by qualified mental health provider and your AO rebuttal submission.

You enlisted in the U.S. Navy and began a period of active duty service on 26 February 1986. Your pre-enlistment physical examination, on 18 February 1986, and self-reported medical history both noted no psychiatric or neurologic issues, history, or symptoms.

On 6 March 1987, you commenced a period of unauthorized absence (UA) that terminated with your arrest by military authorities on 10 March 1987. While you were in a UA status, you

On 19 March 1987, you commenced another UA. Your second UA terminated with your arrest by military authorities on 27 March 1987.

On 8 May 1987, you were convicted at a Special Court-Martial (SPCM) of your two UA offenses and missing ship's movement. You were sentenced to confinement for forty-five (45) days and total forfeitures of pay.

On 25 April 1988, you received non-judicial punishment (NJP) for the misbehavior of a sentinel or lookout. You did not appeal your NJP. On 2 May 1988, your command issued you a "Page 13" retention warning (Page 13) documenting your NJP and for being identified as a disciplinary problem. The Page 13 advised you that any further deficiencies in performance and/or conduct may result in disciplinary action and in processing for administrative discharge. You did not provide a Page 13 rebuttal statement.

On 10 July 1988, you received NJP for UA, insubordinate conduct, and misbehavior of a sentinel or lookout. You did not appeal your NJP.

On 10 July 1988, your command notified you of administrative separation proceedings by reason of misconduct due to a pattern of misconduct and commission of a serious offense. You waived your rights to consult with counsel and to elect a hearing before an administrative separation board.

On 21 July 1988, 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 endorsement, the stated, in part:

SNM has no future for continued naval service due to his total disregard for the Navy's rules and regulations. SNM considered to be an extreme liberty risk while [REDACTED] is deployed to the [REDACTED] and his presence onboard is contrary to the good order and discipline of my command. He is a burden to the Engineering Department and will undoubtedly bring future discredit and embarrassment to the United States Navy overseas if not separated immediately. I strongly recommend he be separated from the navy under other than honorable conditions.

Your separation physical examination, on 2 August 1988, and self-reported medical history both noted no psychiatric or neurologic issues, history, or symptoms. Ultimately, on 1 September 1988, you were separated from the Navy for 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 change to your reason for separation. You contend that: (a) you were suffering from depression while on active duty and were not able to cope properly with your mother's death during your service,

(b) your depression should be considered a mitigating factor for the misconduct you engaged in leading to your discharge, (c) you suffered a mental breakdown and the military did not provide you with appropriate medical treatment; it was likely that your bipolar symptoms began to show themselves while on active duty, (d) a perfect service record is not required to receive an Honorable discharge, (e) you served your country and made sacrifices, but despite such sacrifices, your country failed you, (f) you continue to struggle daily with mental health, and (g) your discharge should be upgraded to accurately reflect the nature of your service and to provide you access to disability benefits that you not only deserve but so desperately need. 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 26 November 2024. As part of the Board's review, the Board considered the AO. The AO stated in pertinent part:

Petitioner was appropriately referred for psychological evaluation and properly evaluated during his enlistment. His personality disorder diagnosis was based on observed behaviors and performance during his period of service, the information he chose to disclose, and the psychological evaluation performed by the mental health clinician. A personality disorder diagnosis is pre-existing to military service by definition, and indicates lifelong characterological traits unsuitable for military service, since they are not typically amenable to treatment within the operational requirements of Naval Service. Temporally remote to his military service, civilian providers have diagnosed him with a mental health condition that may have onset prior to military service. It is possible that the symptoms identified as characterological during service have been re-conceptualized as Unspecified Bipolar Disorder with the passage of time and increased understanding. Unfortunately, there is insufficient evidence to attribute his misconduct to a mental health condition, particularly given an in-service determination that judgment and insight were intact.

The AO concluded, "it is my clinical opinion that there is post-service evidence from a civilian provider of a mental health condition that may have been present in military service. There is insufficient evidence to attribute his misconduct to a mental health condition."

Following a review of your AO rebuttal submission, the Ph.D. did not change or otherwise modify their original AO.

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 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 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.

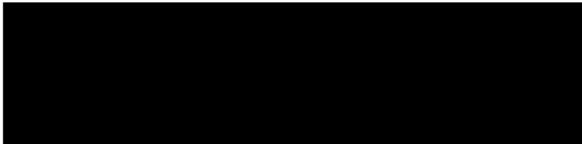
The Board did not believe that your record was otherwise so meritorious as to deserve a discharge upgrade. The Board concluded that significant negative aspects of your conduct and/or performance greatly outweighed any positive aspects of your military record. The Board determined that characterization 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. The Board also noted that you left the Navy while you were still contractually obligated to serve, and you went into a UA status without any legal justification or excuse on two separate occasions totaling twelve (12) days. Moreover, absent a material error or injustice, the Board declined to summarily upgrade a discharge solely for the purpose of facilitating veterans' benefits, or enhancing educational or employment opportunities. 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,

2/10/2025



Executive Director

Signed by: 