



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. 8101-24
Ref: Signature Date

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Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to 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.

Because your application was submitted with new evidence not previously considered, the Board found it in the interest of justice to review your application. A three-member panel of the Board, sitting in executive session on 24 January 2025, has carefully examined your current request. 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 the 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 to the 25 August 2017 guidance from the Office of the Under Secretary of Defense for Personnel and Readiness (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) of a qualified mental health provider and your response to the AO.

You have previously applied to both the Naval Discharge Review Board (NDRB) and, more recently, to the Board. The summary of your active duty service from January 2001 through June of 2003 remains substantially unchanged from that addressed in the Board's previous decision.

In your initial application to the NDRB, you contended that you were not afforded the right to consult legal counsel or to be represented at your Summary Court-Martial (SCM), you provided clemency evidence, and you explained the mitigating circumstances of your unauthorized absence (UA). The NDRB found no error in your discharge but granted an upgraded of your

characterization to General (Under Honorable Conditions) on the basis that your misconduct appeared to be an anomaly in contrast to your history of service and post-service conduct.

Following the NDRB's upgrade of your characterization of service, albeit for misconduct, you then applied to the Board, again contending that clemency considerations warranted a further upgrade of your characterization of discharge to Honorable. Additionally, you submitted mental health contentions related to in-service stressors, primarily involving your spouse having an extra-marital affair with another service member and then leaving you, taking your children, and neglecting them; which resulted in you obtaining custody and having to raise your children as a single father. You submitted post-service clemency documents for consideration and evidence in support of your mental health contentions. Your request was considered on 18 December 2023 and denied.

You now seek reconsideration with substantially similar contentions and clemency factors; but with the addition of a psychiatric evaluation conducted in 2024 to support of your mental health contentions. You attribute your UA period to having requested that your chain of command declining to reassign either you or the sailor with whom your spouse had the affair.

The Board carefully considered all potentially mitigating factors to determine whether the interests of justice warrant relief in your case in accordance with the Wilkie, Kurta, and Hagel Memos. These included, but were not limited to, your continued desire to upgrade your discharge to "Honorable" and to change your reason for discharge, separation authority, separation code, and reentry code. The Board also considered your previously discussed contentions. For purposes of clemency and equity consideration, you submitted a recent psychological evaluation, comparison decisions by the Board which you believe address comparable issues to your request, information regarding reentry codes, previously submitted documents relating to your clemency evidence, and documents related to the Board's previous denial of your request.

Because you primarily contend that a mental health condition affected the circumstances of the misconduct which resulted in your discharge, the Board also considered a new AO, which include a review of your 2024 psychological evaluation. The AO stated in pertinent part:

There is no evidence that he was diagnosed with a mental health condition in military service. Throughout his disciplinary processing, there were no concerns raised of a mental health condition that would have warranted a referral for evaluation. Temporally remote to military service, a psychologist with a military background has opined that the Petitioner experienced a temporary mental health condition during his military service, which contributed to his misconduct but resolved once the stressor was removed. While it is possible that the Petitioner may have left UA due to stress and a desire to avoid harm, it is difficult to attribute remaining UA for an extended period to avoidance related to situational stress.

The AO concluded, "it is my clinical opinion that there is some post-service evidence from a psychologist with a military background of a diagnosis of a temporary mental health condition that may be attributed to military service. There is insufficient evidence to attribute his misconduct solely to a mental health condition."

In response to the AO, you provided additional arguments in support of your application. After reviewing your rebuttal evidence, the AO remained unchanged.

After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your summary court-martial, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and found that your conduct showed a complete disregard for military authority and regulations. Further, in light of the length of your period of unauthorized absence, the Board concurred with the clinical opinion that, although there is some evidence of a mental health condition that may be attributed to military service, there is insufficient evidence to attribute your misconduct solely to a mental health condition. 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. To the extent that your contended mental health condition warrants liberal consideration, the Board found that you have already received such consideration in the form of the initial upgrade of your characterization of service from being under Other Than Honorable conditions to being under Honorable conditions. Even with the consideration of your previously submitted clemency evidence, in conjunction with your mental health contentions, the Board found the evidence insufficient to outweigh the extended length of your UA period as would be necessary to support the additional relief you seek.

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 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 equity¹. 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,

2/24/2025

¹ The Board affirmed its previous rationale that adequate clemency has already been granted in your case and any injustice in your record has already been addressed by the NDRB decision.