



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

██████████
Docket No. 8227-24
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 29 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 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, 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). In addition, the Board considered an advisory opinion (AO) from a qualified mental health professional. Although you were provided an opportunity to respond to the AO, you chose not to do so.

The Board determined that your personal appearance, with or without counsel, would not materially add to their understanding of the issues involved. Therefore, the Board determined that a personal appearance was not necessary and considered your case based on the evidence of record.

You enlisted in the U.S. Navy and began a period of active duty on 23 October 1990. Upon entry onto active duty, you were granted a waiver for one non-minor misdemeanor. On

24 October 1990, you were issued a counseling warning due to your defective enlistment and induction due to fraudulent entry into naval service as evidenced by your failure to disclose your preservice civil involvement/drug abuse.

On 3 January 1991, you received non-judicial punishment (NJP), for two hours unauthorized absence (UA), and disobey a lawful order. You were subsequently issued a counseling warning and advised further deficiencies in you performance and or conduct may result in disciplinary action and in processing for administrative discharge. On 16 August 1991, you received your second NJP for 21 days of UA and missing ship's movement. On 13 September 1991, you received your third NJP for ten specifications of failure to go to your appointed place of duty, wrongful use of marijuana, and wrongful use of LSD.

Consequently, you were notified of administrative separation processing for misconduct due to commission of a serious offense, pattern of misconduct, and drug abuse. After you waived rights, the Commanding Officer (CO) made his recommendation to the Separation Authority (SA) that you be discharged with an Other Than Honorable (OTH) characterization. In the meantime, you received your fourth NJP, on 4 October 1991, for 14 specifications of failure to go to your appointed place of duty. The SA accepted the recommendation and directed you be discharged for commission of a serious offense. You were so discharged on 15 October 1991. Prior to your discharge, you refused to participate in a treatment program.

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, replacement of your awards, and reinstatement of your rank to E-3. You contend that you had an undiagnosed TBI from childhood abuse which caused your problems with authority and authority figures. For purposes of clemency and equity consideration, the Board noted you provided medical documents but no supporting documentation describing post-service accomplishments or advocacy letters.

As part of the Board review process, a licensed clinical psychologist (Ph.D.) reviewed your contentions and the available records, and issued an AO dated 15 December 2024. The Ph.D. stated in pertinent part:

There is no evidence that the Petitioner was diagnosed with a mental health condition during his military service aside from Polysubstance Abuse, Alcohol Dependence and personality disorder traits. Furthermore, every medical evaluation that contained a mental status exam noted "fully oriented to all spheres." Presumably, if the Petitioner were severely suffering from prior TBI's, a provider would have noted any symptoms thereof. His separation physical does indicate a mild concussion as a child and that there were no subsequent or lingering effects thereof. Due to the Petitioner's extensive and long-standing substance abuse and dependency, it is possible that the psychotic symptoms noted from testing in the psychological assessment submitted were drug induced or possibly organic from long-term drug addiction. It appears as though his misconduct was more likely caused by extensive substance abuse and dependency. Additional records (e.g.,

active duty medical records, post-service mental health records describing the Petitioner's diagnosis, symptoms, and their specific link to his separation) would aid in rendering an alternate opinion.

The Ph.D. 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 thorough review, the Board concluded that 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 the fact it included drug offenses. The Board determined that illegal drug use by a service member is contrary to military core values and policy, renders such members unfit for duty, and poses an unnecessary risk to the safety of their fellow service members. Further, the Board concurred with the AO that there is insufficient evidence to attribute your misconduct to a mental health condition. As explained in the AO, every medical evaluation that contained a mental status exam noted "fully oriented to all spheres." Presumably, if you were severely suffering from prior TBIs, a provider would have noted associated symptoms. Further, while your separation physical does indicate a mild concussion as a child, it annotates that there were no subsequent or lingering effects. 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. Additionally, the Board observed that you were given multiple opportunities 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, the Board observed that your record does not reflect that you ever attained the rank of E-3. Regardless, based on your extensive record of misconduct, the Board found no basis to reinstate any paygrade that may have been earned. Additionally, the Board noted your DD Form 214 properly documents your awards. If you feel that you are missing awards, this is considered an administrative error that must first be addressed by the Navy. Board regulations require you to exhaust your administrative remedies by contacting Navy Personnel Command at My Navy Career Center Customer Service at 1-833-330-6622 or email at askmncc@navy.mil.

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 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,

2/14/2025

