



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

██████████
Docket No. 8519-24
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 5 March 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 entered active duty on 14 August 2002. On 11 January 2006, you received non-judicial punishment (NJP) for an unspecified offense. On 6 February 2006,

you received your second NJP for unauthorized absence (UA). On 1 June 2006, you received your third NJP for insubordinate conduct toward a noncommissioned officer and failure to obey an order or regulation.

Unfortunately, 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 16 June 2006, with an General (Under Honorable Conditions) characterization of service, narrative reason for separation of "Pattern of Misconduct," separation code of "JKA," and reentry code of "RE-4."

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 you were dealing with PTSD due to going to war in 2004, were harassed by your division, and were racially profiled. For purposes of clemency and equity consideration, the Board noted you did not provide 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 22 January 2025. 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, or that he exhibited any psychological symptoms or behavioral changes indicative of a mental health condition. He did not submit any medical evidence in support of his claim. 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 these 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 found that your conduct showed a complete disregard for military authority and regulations. The Board observed 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. Further, the Board concurred with the AO and determined there is insufficient evidence to

attribute your misconduct to a mental health condition. As explained in the AO, there is no evidence that you were diagnosed with a mental health condition during your military service or that you exhibited any psychological symptoms or behavioral changes indicative of a mental health condition. In addition, the Board observed that you did not submit any medical evidence in support of your claim. 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. Finally, the Board noted that you already received a large measure of clemency when the Navy assigned you a General (Under Honorable Conditions) discharge despite your record of misconduct that normally warrants an Other Than Honorable characterization of service.

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. 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. 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,

3/24/2025

