



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

██████████
Docket No. 8746-24
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 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). The Board also considered the advisory opinion (AO) furnished by a qualified mental health professional and your response to the AO.

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

You enlisted in the Navy and commenced active duty on 10 December 1984. On 15 July 1988, you received non-judicial punishment (NJP) for larceny related to taking, opening, secreting, destroying, or stealing mail.

After a period of continuous Honorable service that included reenlistments on 8 December 1988, 31 March 1991, 28 February 1993, and 12 February 1995, you were convicted at General Court-

Martial (GCM) of violating Article 121 of the Uniform Code of Military Justice, by committing larceny, on 6 January 1997. Although no amplifying facts are present in your Official Military Personnel File (OMPF) regarding the specifics of your offense, your record reflects your sentence of confinement for nine months, forfeiture of \$800 pay per month for 18 months, reduction to paygrade E1, and a Bad Conduct Discharge (BCD).

Documents related to your GCM, including review and approval of the findings and sentence, in addition to execution of the sentence, are also absent from your OMPF; however, 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. Based on the information contained on your Certificate of Release or Discharge from Active Duty (DD Form 214), you were separated on 11 May 1988 with a “Bad-Conduct” characterization of service, your narrative reason for separation is “Court-Martial Conviction,” your reentry code is “RE-4,” and your separation code is “JJD/902,” which corresponds to court-martial.

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 to upgrade your characterization of service and your contentions that you waited 27 years to make this request, there were many factors that should have been considered at the court-martial but were never submitted, you were young and naïve, you were overpaid multiple times but you did not intentionally conspire to defraud the military, you reported the overpayments to your disbursing officer but no action was ever taken, you were told your pay was okay, your JAG told you what to say and, if you tried to change anything, you were told you would spend multiple years in confinement, you panicked and followed the advice after assuming it was your only choice. For purposes of clemency and equity consideration, the Board considered the evidence you provided in support of your application.

As part of the Board’s review process, a qualified mental health professional reviewed your contentions and the available records and issued an AO dated 23 December 2024. The AO noted in pertinent part:

There is no evidence that he was diagnosed with a mental health condition in military service, or that he exhibited any psychological symptoms or behavioral changes indicative of a diagnosable mental health condition. 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 his military service, he has received diagnoses of PTSD and other mental health concerns from civilian providers. One provider opines that he may have experienced these mental health concerns during the time period of his military service. Unfortunately, available records are not sufficiently detailed to establish clinical symptoms in service or provide a nexus with his misconduct, particularly given a pattern of wrongful appropriation prior to the purported onset of his mental health concerns. Additional records (e.g., post-service mental health records

describing the Petitioner's diagnosis, symptoms, and their specific link to his misconduct) may aid in rendering an alternate opinion.

The AO concluded, "it is my clinical opinion that there is post-service evidence from a civilian provider of a diagnosis of PTSD that may be attributed to military service. There is insufficient evidence to attribute his misconduct to PTSD or another mental health condition."

In response to the AO, you submitted additional information on the circumstances of your case. After reviewing your rebuttal evidence, the AO remained unchanged.

After thorough review, the Board concluded your potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined your misconduct, as evidenced by your GCM, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your offense and likely negative impact your misconduct had on the good order and discipline of your command. The Board opined, at the time of your court-martial, you were an experienced non-commissioned officer, and afforded significant trust and responsibility; stature your misconduct did not reflect. Additionally, the Board concurred with the AO and determined that, although there is post-service evidence from a civilian provider that you were diagnosed with PTSD that may be attributed to military service, there is insufficient evidence to attribute your act of larceny to PTSD or another mental health condition. As explained in the AO, available records are not sufficiently detailed to establish clinical symptoms in service or provide a nexus with your misconduct; particularly given a pattern of wrongful appropriation prior to the purported onset of your mental health concerns. Further, the Board noted your contentions imply that you were not criminally responsible for the misconduct that formed the basis of your conviction¹. 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.

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 and commends you for your post-discharge accomplishments, 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

¹ In particular, you state that you did not intend to defraud the military, you informed your chain of command of your overpayment, and admitted to misconduct only based on the advice of your legal counsel. The Board found these contentions to be contrary to your claim that a mental health condition contributed to your misconduct.

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,

3/20/2025

