



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

Docket No. 8907-24

Ref: Signature Date

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Dear [REDACTED]

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 9 December 2002. Your pre-enlistment physical examination, on 31 July 2002, and self-reported medical history both noted no psychiatric or neurologic issues, history, or symptoms. On 7 May 2003, you reported for duty on board the [REDACTED] ([REDACTED]) in [REDACTED], [REDACTED]

On 6 October 2003, you received non-judicial punishment (NJP) for: (a) three (3) separate

specifications of unauthorized absence (UA), and (b) a failure to obey a lawful regulation. You did not appeal your NJP. On 6 October 2003, your command issued you a "Page 13" warning (Page 13) documenting your NJP. The Page 13 advised you that any further deficiencies in your performance and/or conduct may result in disciplinary action and in processing for administrative separation. You elected not to make a rebuttal statement.

On 2 September 2004, you received NJP for insubordinate conduct. You did not appeal your NJP.

On 22 November 2004, you were convicted at a Summary Court-Martial (SCM) of: (a) making a false official statement, (b) failing to obey a lawful general order, and (c) assaulting a superior non-commissioned officer. You were sentenced to confinement for thirty (30) days, forfeitures of pay, and a reduction in rank to the lowest enlisted paygrade (E-1). On 1 December 2004, the Convening Authority (CA) approved the SCM sentence.

On 30 September 2005, you were convicted at a second SCM of: (a) UA, (b) missing movement, and (c) disrespect towards a superior commissioned officer. You were sentenced to confinement for thirty (30) days, and forfeitures of pay. On 6 October 2005, the CA approved the SCM sentence.

Following your second SCM, 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 right to request a hearing before an administrative separation board.

On 25 October 2005, your commanding officer (CO) recommended to the separation authority (SA) that you receive an under Other Than Honorable conditions (OTH) discharge characterization. In his recommendation, the CO stated, in part:

Seaman Recruit July has demonstrated all the traits of a criminal and a thug and has no place in our Navy. He was given countless chances to change...in an effort to save this Sailor, none have helped.

On 16 November 2005, the SA approved and directed your separation with an OTH characterization of service. Ultimately, on 1 December 2005, you were separated from the Navy for misconduct with an OTH discharge characterization and were assigned a RE-4 reentry code.

On 4 May 2021, the Naval Discharge Review Board denied your initial discharge upgrade application.

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) the relief you seek is warranted because of your struggle with PTSD and PTSD-related mental health issues, which initially arose during your service during Operation Iraqi Freedom, and which went undiagnosed until after your dismissal from the Navy, (b) other facts that had a deleterious effect on your capacity to satisfactorily serve included the illness and passing of your beloved grandfather, and the arbitrary

and capricious actions of the ██████████, (c) your OTH discharge has also limited your ability to apply for certain job opportunities, and negatively impacted your ability to qualify for General Schedule or government contracting jobs, and (d) your OTH limits your ability to take full advantage of the rehabilitative counseling and disability compensation benefits and Department of Veterans Affairs opportunities. 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 13 December 2024. As part of the Board's review, the Board considered the AO. The AO stated 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. He received considerable medical treatment during his confinement in the brig, and it is surprising that no mental health concerns were identified if the Petitioner was experiencing mental health symptoms at that period of time.

Temporally remote to his military service, he has received mental health treatment that he has considered "in retrospect" may have onset during military service. Unfortunately, his personal statement is not sufficiently detailed to establish clinical symptoms in service or provide a nexus with his misconduct. There are some inconsistencies in the records that raise some doubt regarding the reliability of the Petitioner's recall with the passage of time. For example, the Petitioner claims that his final SCM was due to reprisal for an inadvertent lapse in courtesy, but the Petitioner does not explain three days of UA or missing ship's movement.

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

Following a review of your AO rebuttal submission, to include evidence of a post-service diagnosis, PTSD and mental health treatment, the AO conclusion was modified to state, "[t]here is post-service evidence from civilian providers of a diagnosis of PTSD that may be attributed to military service."

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 purported 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 concluded that your administrative separation was legally and factually sufficient, and in compliance with all Department of the Navy directives and policy at the time of your discharge. 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. 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,

2/12/2025

