



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. 9194-25
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.

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 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). The Board also considered the advisory opinion (AO) furnished by a qualified mental health professional; dated 6 February 2025. Although you were afforded an opportunity to submit an AO rebuttal, you chose not to do so.

You enlisted in the Navy and began a period of active duty on 30 June 1989. Prior to commencing active duty, you responded "no" when asked about preservice psychiatric issues. However, you admitted to preservice arrest/charges and marijuana use. On 26 April 1990, you received nonjudicial punishment (NJP) for disobeying a lawful order and orally communicating indecent language. Consequently, you were counseled concerning poor military performance and advised that failure to take corrective action could result in administrative separation. On 3 July

1990, you were evaluated by a medical officer with symptoms of depression and insomnia. Subsequently, you were diagnosed with Alcohol Dependence, Psychological, EPTE, Polysubstance Dependence, Psychological, EPTE, and Antisocial Personality, Severe, EPTE.

On 31 May 1990, you were convicted by summary court martial (SCM) for 64 instances of failure to report to prescribed place of duty and failure to obey a lawful order by riding in a POV while in restricted status. You were found sentenced to forfeiture of pay and a period of confinement. On 25 July 1990, you were evaluated by a medical officer as a result of substance dependency and drug use. On 30 July 1990, you were evaluated by a medical officer as a result of making vague suicide threats to a petty officer after learning of the military changes against you and were diagnosed with Adjustment Disorder w/ Depressed Mood and Antisocial Personality Disorder, Severe, EPTE.

On 16 August 1990, you began a period unauthorized absence (UA) which lasted six-days and resulted in your apprehension by civil authorities. Subsequently, you were convicted by special court martial (SPCM) for an instance of UA and wrongful use of a controlled substance. You were sentenced to a Bad Conduct Discharge (BCD) and a period of confinement. After completion of all levels of review, you were so discharged on 31 January 1991.

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 Memo. These included, but were not limited to, your desire for a discharge upgrade and changes to your reason for separation and reentry code. You contend that: (a) you were experiencing severe mental illness at the time of your misconduct and it worsened throughout the course of your military service, (b) you were diagnosed with Antisocial Personality Disorder and believe that this reflects the intensity of your mental health symptoms and their impact in your mood, behavior, and decision making, (c) you experienced childhood trauma and were struggling with depression, PTSD, ADHD, and Antisocial Personality Disorder, (d) you were verbally and physically abused by your mother and experienced sexual abuse by your babysitter, (e) your mental health condition contributed to the misconduct that led to your less than Honorable discharge, (f) while waiting for your discharge, you made the most terrible mistake when deciding to bring drugs back to base, (g) you have endeavored to improve your mental health through therapy and rehabilitation and have been an active participant in the lives of your children and grandchildren, and (h) you have attempted to become a better human being to both yourself, your family, and the collective society around you. 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, the Board considered the AO. The AO stated in pertinent part:

Petitioner was referred for psychological evaluation during his enlistment and was properly evaluated during an intake assessment. His personality disorder diagnosis was based on observed behaviors and performance during his period of service, the information he chose to disclose to the mental health clinician, and the psychological evaluation performed by the mental health clinician. A personality disorder diagnosis is pre-existing to military service by definition, and indicates lifelong characterological traits unsuitable for military service, since

they are not typically amenable to treatment within the operational requirements of Naval Service. It is very clear from the psychiatric evaluation given, that the Petitioner did meet criteria for a Personality Disorder. His statement is not sufficiently detailed to state a nexus between his misconduct and a mental health condition. 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 insufficient evidence of a diagnosed mental health condition. 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 NJP, SCM, and SPCM, 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 BCD. 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. Additionally, 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, it is very clear from the psychiatric evaluation that you met criteria for a Personality Disorder and that your statement was insufficient to show a nexus between your misconduct and 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.

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 applauds your post-discharge efforts to improve yourself, 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 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 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,

4/8/2025

