



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. 9214-24
Ref: Signature Date

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Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to 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 Board waived the statute of limitation 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 21 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, 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) of a qualified mental health provider. Although you were afforded an opportunity to submit a rebuttal, you chose not to do so.

You enlisted in the Navy and began a period of active duty on 5 January 1972. You initially entered through a reserve cache program but requested extended active duty in return for advancement to the paygrade of E-4; which you acknowledged was binding, effective upon your promotion to that grade. On 19 May 1972, you were promoted to the petty officer paygrade of E-4 and rating of Signalman Third Class (SM3). After serving in an operational environment, on 18 August 1973, you requested reduction of your paygrade and cancellation of your active duty extension. You explained that, having completed your second deployment cruise in the Western Pacific region, you felt that you were not fully qualified to perform the duties of your grade and rating and felt that the Navy was "not for" you. Consistent with your prior acknowledgment of the binding nature of your extension, your request was denied by the Chief of Naval Personnel, pointing out that you had already received the benefit of your bargain via your promotion to the paygrade of E-4 more than one year prior to your request.

You continued serving without documented incident for nearly one year following the denial of your request until you were referred to group counseling for drug use; as documented in a Counseling and Assistance Center evaluation report of 19 April 1974. On 22 May 1974, you commenced a period of unauthorized absence that ended with your civil arrest on 3 June 1974 for joyriding, hit and run accident, and property damage due to your failure to stop. Although you were delivered to shore patrol to return to military authority, you again absented yourself for two additional periods from 10-11 June 1974 and 12-16 June 1974. Your latter absence was again terminated by your civil arrest for possession of marijuana and a switch blade knife.

On 8 August 1975, you were convicted by Special Court-Martial (SPCM) for three specifications of violations under Article 86 of the Uniform Code of Military Justice (UCMJ) due to your repeated unauthorized absences (UAs). Following your release from confinement, on 6 September 1974, you were delivered to civil authorities for disposition of your hit and run charges; however, you again absented yourself on 16 September 1974 and again remained absent until apprehended by civil authorities on 21 September 1974. Following a nonjudicial punishment (NJP) for your UA period, you were transferred to civil authorities for trial proceedings. While in the hands of civil authorities serving the sentence from your civil conviction, you were notified of processing for misconduct due to your civil conviction. In acknowledging your rights, you requested to have your case heard by an administrative separation board, to appear in person, and to be represented by legal counsel; however, you also submitted a conditional waiver of your right to the requested hearing if you were recommended for a General (Under Honorable Conditions) (GEN) discharge. Your request was approved and you so were discharged on 27 November 1974.

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, Kurta, and Hagel Memos. These included, but were not limited to, your desire to upgrade your discharge and your contention that you experienced a nervous breakdown when your ship returned from Vietnam for the second time and you received a GEN because you were discharged before your scheduled discharge date. For purposes of clemency and equity consideration, the Board considered the totality of your application; which consisted solely of your petition without any other additional documentation.

Because you contend that a mental health condition affected the circumstances of your discharge, the Board considered the AO. The AO 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 has provided no evidence in support of his claim. Unfortunately, his personal statement is not sufficiently detailed to establish clinical symptoms or provide a nexus with his requested change of discharge. 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 AO 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 and civil conviction, 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 GEN 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. Additionally, the Board concurred with the AO that there is insufficient evidence of a mental health condition that may be attributed to military service and insufficient evidence to attribute your misconduct to a mental health condition. As explained in the AO, you provided no medical evidence in support of your claim. Additionally, the Board gave considerable weight to your in-service statements which clearly identified that you desired to get out of your extended active duty commitment and, in your own words, "began to screw off and hoped that maybe [you] could be released on an undesirable discharge." 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 you provided no evidence, other than your statement, to substantiate your contentions. In reviewing your record, the Board found no evidence to support your claim that you were assigned a GEN characterization based on your early discharge. Rather, you were assigned your characterization of service based on a qualified discharge waiver due to your civilian conviction. In the end, the Board concluded you were fortunate to receive a GEN characterization of service based on your extensive record of misconduct.

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 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 is attached 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,

4/10/2025
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