



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

Docket No. 9217-24
Ref: Signature Date

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 your application was not filed in a timely manner, the Board found it in the interest of justice to waive the statute of limitations and consider your case on its merits. A three-member panel of the Board, sitting in an executive session, considered your application on 26 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 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, 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 United States Navy and began a period of active duty on 18 May 2004. On 30 September 2005, you received non-judicial punishment (NJP) for unauthorized absence (UA), disrespect toward an officer, and failure to obey an order. On 30 September 2005, you received administrative counseling (Page 13) remarks concerning your NJP and were warned that continued misconduct may result in administrative separation processing. On 29 January 2006,

you received your second NJP for insubordinate conduct toward a petty officer and failure to obey an order. On 19 October 2006, you received your third NJP for UA and failure to obey a lawful order. On 9 September 2007, you received your fourth NJP for insubordinate conduct towards a chief petty officer. Consequently, you were notified that you were being recommended for administrative discharge from the Navy by reason of misconduct due to pattern of misconduct. You waived your right to consult with counsel and to present your case to an administrative discharge board. The commanding officer forwarded your administrative separation package to the separation authority recommending your administrative discharge from the Navy with a General (Under Honorable Conditions) (GEN) characterization of service. The separation authority accepted the recommendation, and you were so discharged on 13 November 2007.

Post-discharge, you applied to the Naval Discharge Review Board (NDRB) for relief. The NDRB denied your request, on 30 October 2008, after determining your discharge was proper as issued.

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 to upgrade your discharge character of service and contentions that: (1) you were diagnosed with untreated ADHD resulting in difficulties that led to your discharge, and (2) you are resubmitting your request for an upgrade with medical documentation provided by your doctor. For purposes of clemency and equity consideration, the Board considered the documentation you provided in support of your application.

Because you contend that ADHD impacted your misconduct, the Board considered the AO. The AO stated in pertinent part:

The Petitioner submitted a letter dated December 2023 from a pharmacist noting psychotropic treatment for ADHD since November 2021. He submitted a mental health consult dated February 2022 where he self-reported a history of ADHD.

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 cite an ADHD diagnosis or symptoms thereof during NDRB in 2008. Furthermore, ADHD is disqualifying from service; thus presumably he did not mention a diagnosis of ADHD in his enlistment physical. He submitted a letter from a pharmacist who notes history of ADHD pre-service and psychotropic treatment thereof since November 2021. Unfortunately, his personal statement is not sufficiently detailed to establish clinical symptoms or provide a nexus with his requested change for narrative reason for separation. Additional records (e.g., mental health records describing the Petitioner's diagnosis, symptoms, and their specific link to his misconduct) would aid in rendering an alternate opinion.

The AO concluded, "it is my clinical opinion there is sufficient evidence of a post-service diagnosis of ADHD. There is insufficient evidence that his misconduct could be attributed to a mental health condition (ADHD)."

After thorough review, the Board concluded your 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 concluded your misconduct 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. As a result, the Board determined your conduct constituted a significant departure from that expected of a service member and continues to warrant a GEN characterization. Further, the Board concluded that you already received a large measure of clemency from the Navy when they assigned you a GEN characterization of service despite a record of misconduct that normally resulted in an Other Than Honorable discharge. Finally, the Board concurred with the AO that there is insufficient evidence that your misconduct could be attributed to a mental health condition (ADHD). As explained in the AO, there is no evidence you exhibited any psychological symptoms or behavioral changes indicative of a mental health condition while on active duty and your personal statement is not sufficiently detailed to establish clinical symptoms or provide a nexus with your misconduct. 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, 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 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 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,

4/22/2025

