



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

██████████
Docket No. 9526-24
Ref: Signature Date

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Dear ██████████

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 10 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, 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. 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 Navy and commenced active duty on 8 November 1982. On 31 January 1983, you commenced a period of unauthorized absence (UA) that ended with your surrender on 22 February 1983. On 8 March 1983, you received non-judicial punishment (NJP) for the period UA, disobeying a Petty Officer, and disobeying a written order.

On 13 May 1983, you again commenced a period of UA that ended with your surrender on 27 September 1983. Shortly after your return, you went UA on 14 October 1983 that ended on 1 April 1984. Following this return, you were placed on restriction in lieu of arrest. However, on 27 April 1984, while still on restriction and awaiting return to your parent command, you again went UA; which ended with your surrender on 30 April 1984.

On 20 June 1984, you pleaded guilty and were convicted at a Special Court-Martial (SPCM) of violating Article 86 of the Uniform Code of Military Justice for your UA during the periods of 15 May through 24 September 1983 and 14 October 1983 through 1 April 1984. You were sentenced to confinement at hard labor for 75 days, forfeiture of \$200 pay per month for two months, reduction to paygrade E1, and a Bad Conduct Discharge (BCD).

After completion of all appropriate levels of review, your sentence was affirmed and ordered executed. On 25 October 1985, you were so discharged.

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 change your narrative reason for separation and separation code to reflect Secretarial Authority. You contend that your discharge should be upgraded because: (1) your childhood trauma and mental health were not sufficiently considered or treated when you were prosecuted in 1984, (2) you have lived an exemplary post-discharge life as a law-abiding citizen since discharge, (3) the BCD is unduly harsh, especially given your youthful age when the offense occurred over 40 years ago, and (4) significant policy changes around mental health have occurred since your discharge in 1985. For purposes of clemency and equity consideration, the Board considered the evidence you provided in support of your application; including your legal brief with exhibits.

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 15 January 2025. 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. He has provided limited medical evidence of mental health concerns that are temporally remote to his military service and appear unrelated. Unfortunately, available records are not sufficiently detailed to establish clinical symptoms in service or provide a nexus with his misconduct. 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 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 your potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your NJP and SPCM 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 punitive 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 and determined that there is insufficient evidence of a diagnosis of a mental health condition that may be attributed to military service and there is insufficient evidence that your misconduct could be attributed to a mental health condition. As the AO noted, there is no evidence that you were diagnosed with a mental health condition in service or that you exhibited any symptoms of a mental health condition. The Board further agreed that you provided insufficient medical documentation to support your claim, and that additional records, as detailed above, may aid in rendering an alternate opinion. 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 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,

3/31/2025

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