



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

██████████
Docket No. 9572-24
Ref: Signature Date

████████████████████
████████████████
████████████████████

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.

You enlisted in the Navy and commenced active duty on 8 December 1997. On 27 March 1998, the Chief of Naval Personnel sent a letter to your Commanding Officer (CO) concerning your possible fraudulent enlistment. The letter provided information on your failure to disclose a pre-service arrest in ██████████ for grand larceny – vehicle theft. After thorough review of the circumstances, your CO determined the charges against you had been dropped and you had made reasonable attempts to inform the Navy of the arrest. Because of this, he asked that you be granted a waiver for fraudulent enlistment. The waiver was approved on 20 June 1998 and you were retained in the naval service.

On 28 November 1998, you received non-judicial punishment (NJP) for unspecified misconduct. You additionally received NJP, on 7 January 1999, for violation of Article 134 and 86 of the Uniform Code of Military Justice. Although, your record does not contain details of your misconduct, it indicates this NJP included three occurrences of unauthorized absence (UA).

Unfortunately, the documents pertinent to your administrative separation are also not in your record. Notwithstanding, the Board relies on a presumption of regularity to support the official actions of public officers and, in the absence of substantial evidence to the contrary, will presume that they have properly discharged their official duties. Based on the information contained on your Certificate of Release or Discharge from Active Duty (DD Form 214), you were separated, on 28 January 1999, with an "Under Other Than Honorable Conditions (OTH)" characterization of service, narrative reason for separation of "Misconduct," reentry code of "RE-4," and separation code of "HKQ," which corresponds to misconduct – commission of a serious offense.

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 collect benefits. You contend that, due to your youth, did not realize the importance of what you were contracted to do, your PTSD kicked in, and you fell into a depressive state of mind. You further contend you felt as if you were useless to the Navy because depression took hold of you; however, you regret what happened. That it was one of the worse situations you have had to face in your adult life and that you are still facing it. For purposes of clemency and equity consideration, the Board considered the evidence you provided in support of your application; including your ██████████ Department of Corrections medical records related to your mental health.

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 16 January 2025. The AO noted in pertinent part:

Unfortunately, available records are limited. 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. Temporally remote to his military service, he has reported a diagnosis of PTSD attributed to a vague report of military trauma. However, the Petitioner did not experience sufficiently impairing symptoms to seek treatment, even after his incarceration. 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 diagnosis of PTSD that may be attributed to military service. There is insufficient evidence to attribute his misconduct to PTSD or another 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 NJPs, 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 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. Additionally, the Board concurred with the AO and determined that there is insufficient evidence of a diagnosis of PTSD that may be attributed to military service and insufficient evidence to attribute your misconduct to PTSD or another mental health condition. As the AO noted, your medical records are limited, there is no evidence that you were diagnosed with a mental health condition in service, or that you exhibited any symptoms or behavioral changes indicative of 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. Finally, 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 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 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
