



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

██████████  
Docket No. 9612-24  
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 you did not file your application in a timely manner, the statute of limitations 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 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, 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)/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 an advisory opinion (AO) from a qualified mental health professional; dated 10 February 2025. Although you were provided an opportunity to comment on 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 entered active duty with the Navy on 28 July 1986. On 3 March 1988, you received non-judicial punishment (NJP) for disrespect toward a senior petty officer. On 27 October 1988, you

received NJP for violation of Article 91. As a result, you were counseled on being retained in the Navy due to your misconduct and warned that any future misconduct may result in administrative separation. On 4 November 1988, you received a medical evaluation that diagnosed you with an adjustment disorder with mixed disturbance of mood and passive and dependent personality traits. On 12 January 1989, a special court-martial (SPCM) convicted you of stealing \$520.00 from another Sailor. Consequently, you were notified of pending administrative separation action by reason of misconduct due to a pattern of misconduct and commission of a serious offense. After you elected to waive your rights, your commanding officer (CO) forwarded your package to the separation authority (SA) recommending your discharge with an Other Than Honorable (OTH) characterization of service. The SA approved the recommendation and you were so discharged on 11 April 1989.

Post-discharge, you twice applied to the Naval Discharge Review Board (NDRB) for a discharge upgrade. On 14 September 1990 and 28 January 1992, the NDRB denied both request after determining that 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 Kurta, Hagel, and Wilkie Memos. These included, but were not limited to your desire to upgrade your discharge and contentions that you were suffering from mental health concerns due to racial prejudice and harassment, you were treated unfairly by your command, and your larceny charge was a misunderstanding. For purposes of clemency and equity consideration, the Board considered the totality of your application; which consisted solely of the letter you included with your petition without any other additional documentation.

As part of the Board's review, a qualified mental health professional reviewed your request and provided the Board with an AO. The mental health professional stated in pertinent part:

During military service, the Petitioner was diagnosed with an Adjustment Disorder. Problematic character traits were also noted by military mental health providers. Unfortunately, there are inconsistencies with the service medical record and the Petitioner's current statement that raise doubt regarding his candor or the reliability of his recall over time. Available records are not sufficiently detailed to establish 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 in-service 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 your misconduct, as evidenced by your NJPs and SPCM, outweighed the potential 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 and 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. The Board also concurred with AO that there is insufficient evidence to attribute your misconduct to a mental health condition. As pointed out in the AO, you were diagnosed with an Adjustment Disorder and Problematic character traits by a military mental health providers and available records are not sufficiently detailed to establish a nexus with your misconduct. Finally, the Board was not persuaded by your version of events that formed the basis for your SPCM conviction. The Board noted that there is no evidence in your record, and you submitted none, to substantiate your allegation that you were wrongfully convicted.

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 statement 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 mitigated 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,

4/14/2025

