



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

■
Docket No. 9659-24
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 5 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 afforded an opportunity to submit an AO rebuttal, you chose not to do so.

You enlisted in the Navy and began a period of active duty on 22 May 1978. On 4 August 1978, you reported to ■■■■■, ■■■■■, ■■■ for temporary duty under instruction. On 10 October 1978, you received nonjudicial punishment (NJP) for absence from appointed place of duty.

On 10 December 1978, you reported to ■■■■■ for duty. On 13 February 1979, you received your second NJP for unauthorized absence (UA). On 21 June 1979, you received your third NJP for two specifications of UA. On 23 August 1979, you received your fourth NJP for a period of UA totaling 28 days. On 9 October 1979, you received your fifth NJP for UA.

On 14 March 1980, you were issued an administrative remarks (Page 13) retention warning formally counseling you concerning your frequent involvement of a discreditable nature with military authorities. The Page 13 expressly advised you that any future involvement on your part of a discreditable nature with military authorities may be cause for your administrative discharge. On 28 July 1980, you received your sixth NJP for 10 specifications of UA and five specifications of assault.

On 20 August 1980, you reported to ■ for duty. On 10 December 1980, you received your seventh NJP for UA. On 11 December 1980, you were issued a Page 13 counseling concerning your unsatisfactory conduct. On 14 May 1981, you received your eighth NJP for absence from appointed place of duty and violating a general order by sleeping in your rack while in civilian clothes. On 18 August 1981, you received your ninth NJP for possession of marijuana. On 10 November 1981, you were issued a Page 13 counseling concerning your unsatisfactory conduct. On 29 December 1981, you received your tenth NJP for assault. On 30 March 1982, you received your eleventh NJP for disobeying a direct order and two specifications of sleeping while on watch.

Consequently, you were notified that you were being recommended for administrative discharge from the Navy by reason of misconduct due to frequent involvement of a discreditable nature with military authorities and drug abuse. You elected your right to consult with military counsel and to present your case to an administrative discharge board (ADB). On 15 April 1982, an ADB was convened and determined that the preponderance of the evidence supported a finding of misconduct and recommended that you be separated from the Navy with an Under Other Than Honorable (OTH) conditions characterization of service. The commanding officer (CO) forwarded your administrative separation package to the separation authority concurring with the ADB recommendation. The separation authority approved the recommendation, and you were so discharged on 29 June 1982.

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 character of service and contentions that: (1) you experienced racial discrimination, (2) as an African American male, you were verbally abused during your period of service, (3) you reached a point to you reacting in anger due to the excessive harassment, and (4) the harassment haunted you for many years. For purposes of clemency and equity consideration, the Board considered the documentation you provided in support of your application.

As part of the Board's review, a qualified mental health professional reviewed your contentions and the available records and provided the Board with an AO on 16 January 2025. The AO stated in pertinent part:

There is no evidence that he was diagnosed with a mental health condition during his military service. Temporally remote to his military service, he reported to a VA clinician that he experiences symptoms of PTSD attributed to racial harassment in service. Unfortunately, inconsistencies with the Department of Veterans Affairs (VA) record and the service record raise doubt regarding the Petitioner's candor or

the reliability of his recall. There is insufficient evidence of clinical symptoms in service or to attribute his chronic and repetitive misconduct to a mental health condition. 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 post-service evidence from a VA clinician 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 evident by your multiple counselings and numerous 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. Additionally, the Board determined that illegal drug use or possession by a service member is contrary to military core values and policy, renders such members unfit for duty, and poses an unnecessary risk to the safety of their fellow service members. Additionally, the Board noted that marijuana use or possession in any form is still against Department of Defense regulations and not permitted for recreational use while serving in the military. Further, the Board concurred with the AO that, while there is post-service evidence from a VA clinician of a diagnosis of PTSD that may be attributed to military service, there is insufficient evidence to attribute your misconduct to PTSD or another mental health condition. As the AO explained, temporally remote to your military service, you reported to a VA clinician that you experienced symptoms of PTSD that was attributed to racial harassment in service. Unfortunately, the inconsistencies with the VA record and your service record raise doubt regarding your candor or the reliability of your recall. The Board agreed there is insufficient evidence of clinical symptoms in service or to attribute your chronic and repetitive misconduct to 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 otherwise not be held accountable for your actions, and you were properly discharged based on your misconduct. Furthermore, the Board noted that you were provided multiple opportunities to correct your conduct deficiencies during your service, but you continued to commit additional 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 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,

3/19/2025

