



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

Docket No. 10064-24  
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 executive session, considered your application on 4 April 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 Navy and began a period of active duty on 5 October 1999. From 16 February 2001 to 13 March 2001, you commenced various periods of unauthorized absence (UA); totaling approximately 25 days. Upon your return, you immediately commenced another period of UA during which you missed ship's movement on multiple occasions. You eventually surrendered from your UA on 18 September 2001 and placed in pre-trial restriction in order to

secure your attendance at a court-martial. You later entered into a pre-trial agreement where you agreed to plead guilty at a summary court-martial (SCM) and waive your administrative separation board in exchange, presumably, for not having charges referred to a higher forum and an expeditious separation from the Navy.

On 15 October 2001, you pleaded guilty at a SCM for your six periods of UA and nine instances of missing ship's movement. Consequently, you were notified that you were being recommended for administrative discharge from the Navy by reason of misconduct due to commission of a serious offense. In accordance with your agreement, you waived your procedural right to present your case to an administrative discharge board. The commanding officer forwarded your administrative separation package to the separation authority (SA) recommending your administrative discharge from the Navy under Other Than Honorable (OTH) characterization of service. The SA approved the recommendation and directed your separation by reason of misconduct due to commission of a serious offense. On 12 November 2001, 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 discharge character of service and contentions that: (1) your mental health has been bad, (2) you were dealing with losing your mother from cancer, separating from your wife, and dealing with service-connected PTSD, (3) you witnessed an F-14 crash and you became more depressed, (4) you had insomnia and began seeing the ship's psychiatrist; who recommended that you be separated, (5) you experienced panic attacks and contemplated suicide which led you to go UA in March 2001 for 66 days, (6) you turned yourself in because this was not your usual behavior, (7) you are currently under treatment, and (8) you are trying to teach your kids that you make mistakes in life but it does not define who you are. For purposes of clemency and equity consideration, the Board considered the documentation you provided in support of your application.

Because you contend that PTSD/other mental health impacted your misconduct, the Board considered the AO. The AO stated in pertinent part:

Petitioner was appropriately referred for psychological evaluation and properly evaluated during his enlistment. His adjustment and hallucinogen disorder diagnoses were based on observed behaviors and performance during his period of service, the information he chose to disclose, and the psychological evaluation performed by the mental health clinician. Temporally remote to his military service, the VA has granted service connection for PTSD and other mental health concerns. Unfortunately, available records do not support the contention that his UA should be attributed to avoidance related to undiagnosed PTSD symptoms. Records indicate that he was experiencing flashbacks prior to the purported traumatic precipitant. Additionally, his flashbacks were related to pre-service substance use that was not disclosed prior to enlistment, and that his UA appears related to disappointment regarding this determination.

The AO concluded, "it is my clinical opinion that there is post-service evidence from the VA of diagnoses of PTSD and other mental health concerns that may be attributed to military service.

There is insufficient evidence to attribute his misconduct to PTSD or another mental health condition incurred during military service.”

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 SCM, 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. Further, the Board concurred with the AO that there is insufficient evidence that your misconduct could be attributed to PTSD or another mental health condition. As explained in the AO, your medical evidence is temporally remote to your service and available records do not support the contention that your UAs should be attributed to avoidance related to undiagnosed PTSD symptoms. 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 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 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,

4/28/2025

