

DEPARTMENT OF THE NAVY

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

> Docket No. 10086-24 Ref: Signature Date

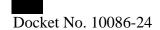


Dear Petitioner:

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 9 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, 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 21 February 2025, and your response to the AO.

You entered active duty with the Navy on 3 February 1981. On 29 June 1981, you received non-judicial punishment (NJP) for being in an unauthorized absence (UA) status for four hours. On 28 September 1981, you received NJP for being in a UA status for one day. On 6 October 1981, you were counseled on your frequent involvement with military authorities and warned that future misconduct my result in administrative separation. On 28 December 1981, you received NJP for engaging in a fistfight and assaulting another service member. On 28 April 1982, you received NJP for assaulting a senior petty officer and disrespect toward a senior petty officer. On 19 July 1982, you received NJP for being in UA status for 12 days and missing ship's movement. On 3 November 1982, you received NJP for being in a UA status for three hours and 15 minutes.



On 22 November 1982, you commenced on a period of UA that lasted one day. On 12 January 1983, you received NJP for being UA five days. Consequently, you were notified of pending administrative separation action by reason of misconduct due to commission of a serious offense. After you waived 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 CO's recommendation and you were so discharged on 25 January 1983.

Post-discharge, you applied to the Naval Discharge Review Board (NDRB) for a discharge upgrade. On 16 August 1991, the NDRB denied your 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 you incurred PTSD or a mental health condition during military service, your mental health condition went undiagnosed during your service in the Navy and contributed to your misconduct, and you would like to receive Department of Veterans Affairs benefits. For purposes of clemency and equity consideration, the Board considered the evidence you provided in support of your application.

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:

There is no evidence that the Petitioner was diagnosed with a mental health condition while in military service, or that he exhibited any psychological symptoms or behavioral changes indicative of a diagnosable mental health condition. In 1991 NDRB review, Petitioner noted, "I was young and very alone. I came across some situations that were shocking to me and did not know how to react. I did not respond reasonably to my first encounter with racism and I know now that had I acted more maturely, the situation may be different." It is unfortunate that the circumstances leading to at least some of his misconduct was negative; however, the events described do not meet criteria to warrant a diagnosis of PTSD as per DSM-V-TR guidelines. Furthermore, although it is certainly possible that he faced adversity during his time in service, he continued to go UA and engage in physical altercations despite counseling and warning. Additional records (e.g., post-service mental health records describing the Petitioner's diagnosis, symptoms, and their specific link to his misconduct) would aid in rendering an alternate opinion.

The AO concluded, "it is my clinical opinion that there is sufficient evidence of mental health conditions that existed post-service. There is insufficient evidence to attribute his misconduct to a mental health condition."

In response to the AO, you submitted a statement that provided additional information regarding the circumstances of your case. After reviewing your rebuttal evidence, the AO remained unchanged.

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, 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 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 AO that there is insufficient evidence to attribute your misconduct to a mental health condition. As pointed out in the AO, there is no evidence that you were diagnosed with a mental health condition while in military service or that you exhibited any psychological symptoms or behavioral changes indicative of a diagnosable mental health condition. As explained in the AO, the events you described do not meet criteria to warrant a diagnosis of PTSD as per DSM-V-TR guidelines. 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 provided in mitigation, even in light of the Wilkie Memo and reviewing the record 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 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.

