



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

██████████
Docket No. 10111-24
Ref: Signature Date

██
████████████████████
██

Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to Title 10, United States Code, Section 1552. 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 17 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 the 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). As part of the Board's review, a qualified mental health professional reviewed your request and provided the Board with an Advisory Opinion (AO). Although you were afforded an opportunity to submit a rebuttal, you chose not to do so.

You enlisted in the Navy and began a period of active duty on 3 December 2003. On 13 July 2005, you received nonjudicial punishment (NJP) for a period of unauthorized absence (UA), dereliction of duty, and false official statement. You were also issued administrative remarks documenting your infractions, retaining you in the Naval service, and advising you that subsequent violation(s) of the Uniform Code of Military Justice (UCMJ) or conduct resulting in civilian conviction(s) could result in an administrative separation under Other Than Honorable (OTH) conditions. In July 2006, you were evaluated for difficulty adjusting and referred for a stress management group "to learn effective coping skills with communication, anxiety, conflict resolution, self-esteem, and anger management." You were subsequently diagnosed with an

Adjustment Disorder and, in August 2006, attended a week-long class run by the Outpatient Crisis Intervention Program. On 19 April 2007, you were convicted by a Summary Court-Martial (SCM) of the larceny of a laptop and external hard drive, and self-injury without intent to avoid service. You were sentenced to be reduced in rank to E-1, to be confined for 30 days, and to forfeit \$867.60 pay per month for one month. Consequently, you were notified that you were being recommended for administrative discharge from the Navy for the commission of a serious offense, pattern of misconduct, and drug abuse; at which time you waived your right to consult with counsel and to present your case to an administrative discharge board. Your commanding officer forwarded your administrative discharge separation package to the separation authority (SA) recommending your administrative discharge from the Navy with an OTH characterization of service adding,

“On 19 April 2007, [Petitioner] was found guilty of larceny of a laptop and an external hard drive, and self-injury without intent to avoid service. [Petitioner] committed larceny of about \$1900.00 against a shipmate with whom he shared a berthing. That shipmate briefly left the laptop and hard drive unattended in the berthing, at which time [Petitioner] took both in an admitted attempt to gain something for himself. [Petitioner’s] self-injury without intent to avoid service was committed by abuse of prescribed medication. This was [Petitioner’s] second disciplinary infraction during his enlistment; the first resulting in a finding of guilty at non-judicial punishment proceedings. By his own statement, [Petitioner] demonstrated that he knows what resources to access for assistance with his problems, and that he sought but did not heed advice provided by those resources. The totality of [Petitioner’s] conduct demonstrates that he cannot adapt to military lifestyle...”

The SA approved the recommendation and you were so discharged on 30 May 2007.

The Board carefully considered all potentially mitigating factors to determine whether the interest 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 your contentions that family and occupational stressors contributed to your mental health symptoms, misconduct, and discharge. For purposes of clemency and equity consideration, the Board considered the evidence you submitted in support of your application.

Based on your assertions that you incurred PTSD and other mental health issues during military service, which may have contributed to the circumstances of your separation from service, a qualified mental health professional reviewed your request for correction to your record and provided the Board with an AO. The AO stated in pertinent part:

Petitioner was appropriately referred for psychological evaluation during his enlistment and properly evaluated during a three-day observation period. His adjustment disorder diagnosis was 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. Problematic character traits and possible malingering behavior were noted to be ruled out once acute stressors, including the Petitioner’s legal difficulties, were resolved. There is no in-service evidence of a diagnosis of PTSD and the Petitioner has provided no

medical evidence to support his claims. Unfortunately, it is difficult to attribute his misconduct to mental health concerns, as his mental health symptoms appear in response to stressors, including legal troubles following misconduct. There are also some inconsistencies between the Petitioner's statement and his service record that raise doubt regarding the reliability of his recall. 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 of a diagnosis of PTSD. There is insufficient evidence to attribute his misconduct to PTSD or another mental health condition."

After a thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined your misconduct, as evidenced by your NJP and 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 an opportunity 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 that there is insufficient evidence to attribute your misconduct to PTSD or another mental health condition. As explained in the AO, you did not provide medical evidence in support of your claims and the inconsistencies between your personal statement and your service record raise doubts regarding the reliability of your recall. Therefore, the Board determined that your discharge was proper and equitable under standards of law and discipline and that the discharge accurately reflects your conduct during your period of service.

Therefore, 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. 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 the 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,

4/3/2025

