



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

██████████
Docket No. 10216-24
Ref: Signature Date

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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 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 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, 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). Additionally, the Board also considered an advisory opinion (AO) furnished by qualified mental health provider. Although you were provided an opportunity to respond to the AO, you chose not to do so.

After a previous period of Honorable service, you reenlisted in the U.S. Navy and began a second period of active duty service on 21 March 1989. Your re-enlistment physical examination, on 16 March 1989, and self-reported medical history both noted no psychiatric or neurologic issues or symptoms.

On 25 November 1992, you were convicted at a Summary Court-Martial (SCM) of: (a) two (2) separate specifications of making a false official statement, and (b) frauds against the United

States. Your crimes were related to signing official documents to get a dependent ID card for someone who was not your spouse, and for filing a false dependent travel claim, in that the claimed dependents were not your dependents, nor did such dependents perform the claimed travel. You were sentenced to a reduction in rank to E-4, forfeitures of pay, and restriction. However, the Convening Authority suspended the restriction portion of the SCM sentence.

On 25 November 1992, your command notified you of administrative separation proceedings by reason of misconduct due to the commission of a serious offense. You waived your rights to consult with counsel and to request a hearing before an administrative separation board. You did not object to your separation.

On 30 November 1992, your commanding officer (CO) recommended to the Separation Authority (SA) that you receive an under Other Than Honorable conditions (OTH) characterization of service. In his recommendation, your CO stated, in part:

[Petitioner] has been an administrative burden since his arrival at this command. Upon discovering that charges were pending against him for submitting a false claim and fraudulently acquiring a dependent I.D. card, [Petitioner] has since been claiming leg and foot problems in order to enable his reassignment to a shore command and possible consideration for a disability discharge. In all of our attempts [in] assisting [Petitioner] to obtain the BAQ and WHA he is entitled to, he has constantly lied about the proper identification of his dependents. [Petitioner's] presence on the job has been unreliable, again due to problems with his supposed "dependents." It is time for this young man to face his responsibilities and the consequences of his actions. I strongly recommend that [Petitioner] be expeditiously separated from the naval service with an other than honorable discharge.

In the interim, your separation physical examination, on 4 December 1992, and self-reported medical history noted no neurologic or psychiatric issues or symptoms. Ultimately, on 15 December 1992 you were discharged from the Navy for misconduct with an OTH discharge characterization and were assigned an RE-4 reentry code.

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 for a discharge upgrade and contentions that: (a) you were suffering from an injury that happened when the ship rolled during a deployment, (b) at no time did you ever commit or was involved in committing any serious offenses while serving your country, (c) it was your understanding that because you had an injury that prevented you from doing your job, that "other than honorable" was the Navy's term for a medical discharge. For purposes of clemency and equity consideration, the Board considered the totality of the evidence you provided in support of your application.

A licensed clinical psychologist (Ph.D.) reviewed your contentions and the available records and issued an AO dated 14 February 2025. As part of the Board's review, the Board considered the

AO. The AO 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 suffered from any symptoms characteristic of a mental health condition. His statement is not sufficiently detailed to provide a nexus with his misconduct. Furthermore, the nature and severity of his misconduct is not typical of behaviors caused by any mental health condition.

The Ph.D. concluded, “it is my clinical opinion that there is insufficient evidence of a mental health condition that can be attributed to 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. In accordance with the Hagel, Kurta, and Wilkie Memos, the Board gave liberal and special consideration to your record of service and your contentions about any traumatic or stressful events you experienced and their possible adverse impact on your service. However, the Board concluded that there was no convincing evidence that you suffered from any type of mental health condition while on active duty, or that any such mental health condition was related to or mitigated the misconduct that formed the basis of your discharge. As a result, the Board concluded that your misconduct was not due to mental health-related conditions or symptoms. Additionally, even if the Board assumed that your misconduct was somehow attributable to any mental health conditions, the Board unequivocally concluded that the severity of your misconduct far outweighed any and all mitigation offered by such mental health conditions. The Board determined the record reflected that your misconduct was intentional and willful and demonstrated you were unfit for further service. The Board also 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.

The Board observed that the definition of a serious offense for administrative separation purposes is an offense under the Uniform Code of Military Justice that could receive a punitive discharge as a potential punishment if such charge was adjudicated at a court-martial. The Board noted that both of your SCM offenses qualify for a punitive discharge at a court-martial; either individually or collectively.

The Board did not believe that your record was otherwise so meritorious as to deserve a discharge upgrade. The Board concluded that significant negative aspects of your conduct and/or performance greatly outweighed any positive aspects of your military record. The Board determined that characterization under OTH conditions is appropriate when the basis for separation is the commission of an act or acts constituting a significant departure from the conduct expected of a Sailor.

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 in 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,

4/15/2025

