



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

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Docket No. 10468-24
Ref: Signature Date

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Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to 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 Board waived the statute of limitation 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 2 May 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). The Board also considered the advisory opinion (AO) of a qualified mental health provider. Although you were afforded an opportunity to submit a rebuttal, you chose not to do so.

You enlisted in the Navy Reserve and served an initial period of Honorable active service from 26 November 1985 through 4 September 1989; during which you earned the Good Conduct medal. You immediately reenlisted on 5 September 1989 and continued on active duty. On 5 September 1990, you were subject to nonjudicial punishment (NJP) for a violation of Article 134 of the Uniform Code of Military Justice (UCMJ) for indecent exposure of your genitals in a public manner. You then received a second NJP, on 3 March 1991, for a violation of Article 86 of the UCMJ due to an unauthorized absence (UA) of a single day. In March 1991, you

underwent a psychiatric evaluation which documented your report of a history of perversion, having existed prior to your entry onto active duty, with no evidence of depression or of an anxiety disorder. You were diagnosed as having a Personality Disorder (PD), not otherwise specified, that was considered severe.

On 1 April 1991, you were issued administrative counseling advising you that you were being retained but warned you to correct your deficiencies with respect to the PD which had manifested itself by your indecent exposure and UA period. However, in January 1992, you received a third NJP for two additional violations of Article 86 and were notified of administrative separation processing for misconduct due to a pattern of misconduct and convenience of the government due to your diagnosed PD. Ultimately, the separation authority directed that you be discharged under Other Than Honorable (OTH) conditions by reason of your pattern of misconduct and you were so discharged on 17 April 1992.

The Board carefully considered all potentially mitigating factors to determine whether the interests of justice warrant relief in your case in accordance with the Wilkie, Kurta, and Hagel Memos. These included, but were not limited to, your desire to upgrade your discharge and contention that your discharge was unjust either under liberal consideration policy or on the basis of clemency considerations, your commanding officer recommended that you be separated under honorable conditions for your PD, you were contrite about your conduct and took responsibility, that your youth, inexperience with relationships, and troubled childhood contributed to your misconduct, your incident of indecent exposure had mitigating circumstances which should be considered, your misconduct was considered minor as evidenced by your receipt of NJP rather than prosecution at court-martial or civil trial, another individual who committed similar sexual misconduct received a discharge under honorable conditions in spite of a civilian conviction, you served nearly four years of successful service, and the marked deterioration of your behavior and performance due to your mental health condition occurred after your first enlistment. In addition, you claim to have sought a mental health evaluation, at your mother's urging, due to your strange behavior and, after being diagnosed with schizophrenia, your condition improved with medication. You were initially denied benefits by the Department of Veterans Affairs (VA) in spite of your Honorable period of service and you believe the length of time the VA took to resolve this error should be considered as mitigating. Finally, you are currently work as a truck driver and are working your way out of homelessness. In support of your contentions and for the purpose of clemency and equity consideration, the Board considered the totality of your application that included a legal brief, your final discharge record, a claim statement you submitted to the VA, and reference documents.

Because you contend that a mental health condition affected the circumstances of the misconduct which resulted in your discharge, the Board also considered the AO. The AO stated in pertinent part:

Petitioner was appropriately referred for psychological evaluation and properly evaluated during his enlistment. His paraphilic and personality 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. Unfortunately, he has provided no medical evidence to support his claims of another mental health condition incurred in or exacerbated by military service. His misconduct appears to be consistent with his diagnosed

personality disorder, rather than evidence of another mental health condition. Furthermore, it is difficult to consider how another mental health condition would account for his misconduct, given his statements that his misconduct was erroneous or due to immaturity. 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 insufficient evidence of mental health concerns that may be attributed to military service. There is insufficient evidence to attribute his misconduct to a mental health condition, other than his diagnosed personality disorder."

After thorough review, the Board concluded the potentially mitigating factors you submitted for consideration were insufficient to warrant relief at this time. Specifically, the Board determined that your misconduct, as evidenced by your NJPs, 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 took into consideration that your incident of indecent exposure which, under recent changes to the UCMJ, would now be charged more severely, rather than less, under Uniform Code of Military Justice Article 120.

Additionally, the Board concurred with the AO that insufficient evidence to attribute your misconduct to a mental health condition, other than his diagnosed personality disorder. As explained in the AO, you provided no medical evidence in support of your claim and it is difficult to attribute your misconduct to a mental health condition when you contend that your misconduct was erroneous due to your immaturity. 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. Moreover, 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 serious misconduct more than outweighed the potential mitigation offered by any mental health conditions.

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. 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,

5/27/2025

