



**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. 11354-24  
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.

Because your application was submitted with new evidence not previously considered, the Board found it in the interest of justice to review your application. A three-member panel of the Board, sitting in executive session on 7 March 2025, has carefully examined your current request. 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 25 August 2017 guidance from the Office of the Under Secretary of Defense for Personnel and Readiness (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 the advisory opinion (AO) furnished by qualified mental health provider as part of your previous petition.

On 9 June 1993, the Naval Discharge Review Board denied your initial application for discharge upgrade relief. On 7 December 1999, this Board denied your initial petition for relief. On 31 July 2017, the VA denied you any service-connection for both asbestosis and any claimed mental health conditions. On 20 July 2020, this Board denied your second petition for relief. On

24 March 2023, this Board denied your third petition for relief. The AO drafted as part of your third petition noted as follows:

Petitioner provided evidence he was diagnosed post-discharge with PTSD and other mental health conditions attributed to stressors both prior to enlistment (witnessed death of sister), as well as during his military service (confinement and alleged maltreatment at the hands of his LPO). However, clarifying information made available did not provide sufficient markers to establish an in-service onset and development of mental health symptoms for any conditions other than Substance Use Disorder nor to identify a nexus between a mental health condition and his misconduct. Additionally, in reviewing Petitioner's in-service and post-discharge clinical evidence, greater weight was given to clinical evaluations regarding his in-service mental health condition contemporary to his military service as having greater probative value than mental health evaluations rendered over twenty-five years after discharge.

Regarding his contention of lead toxicity, neither his in-service medical records nor post-discharge VA health records contained evidence of a diagnosis of lead toxicity. There was no clinical evidence he suffered from the pathognomonic symptoms of lead toxicity of chronic and progressive abnormalities in blood pressure, brain, kidney, and reproductive health to include headaches, stomach cramps, constipation, fatigue, irritability, or muscle joint pain.

The AO concluded: "it is my considered medical opinion that there is insufficient evidence that Petitioner incurred a medical or mental health condition during his military service, other than his diagnosed substance use disorder, or that Petitioner's in-service misconduct was attributable to a medical or mental health condition."

Following a review of your new medical documentation, to include the letters from your medical providers, the AO drafter did not change or otherwise modify their original AO.

The AO drafter determined that the assertions in such letters were not supported by your medical and mental health records contemporaneous to your active duty service. The MD noted, "...Navy records during his time in the shipyards showed his blood lead levels were documented every six months and found to be within acceptable limits (though he [counsel] noted Petitioner denied they were checked)." The MD concluded by opining: "...based on the available objective evidence, it remains my medical opinion that there is insufficient evidence that Petitioner incurred a medical or mental health condition, other than his diagnosed substance abuse and life circumstance conditions."

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 change to your reason for separation. You contend that: (a) while stationed on the ██████████ ██████████, you spent long days chipping and grinding lead paint off bulkheads, took meals on the jobsite surrounded by lead particles and other hazardous materials, and were not provided with

adequate protective gear, (b) you began to suffer from irritability and feelings of depression which you had not reported experiencing before serving in the Navy and which culminated in you beginning to self-treat your mental-health condition with alcohol abuse, (c) your symptoms at the time were similar to those experienced by an individual suffering from PTSD with depression, anxiety, and shortness of breath where none had existed before due to your exposure to dangerous chemicals during the ██████████ overhaul, (d) as your exposure to toxic materials continued, your mental health struggles worsened and self-treatment with alcohol abuse resulted in numerous unauthorized absences, (e) your chain of command made a material error of discretion by not adequately or uniformly testing all Sailors exposed to heavy metal exposure in connection with the ██████████ overhaul, (f) you maintain that although you were directly involved in removing lead paint through sandblasting or chipping bulkheads, your blood levels were never examined and no protective equipment was ever provided, (g) although your Navy records show your blood lead levels were documented every six (6) months and found to be within acceptable levels, you deny that your blood levels were actually ever checked, and (h) your chain of command and the Navy's monitoring system made a material error of discretion in not properly screening or treating you for heavy metals poisoning and instead chose to administratively separate you while serving in incredibly difficult circumstances with an inadequate support or treatment network. For purposes of clemency and equity consideration, the Board considered the totality of the evidence you provided in support of your application.

After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. In accordance with the Kurta, Hagel, 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 nexus between any purported lead poisoning or mental health conditions and/or related symptoms and your misconduct, and determined that there was insufficient evidence to support the argument that any such purported lead poisoning, mental health conditions mitigated the misconduct that formed the basis of your discharge. As a result, even under the liberal consideration standard the Board concluded that your misconduct was not due to mental health-related conditions or symptoms, or any lead toxicity-related concerns. 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 far outweighed any and all mitigation offered by such mental health conditions. The Board determined the record clearly reflected that your misconduct was willful and intentional, and demonstrated you were unfit for further service. The Board also concluded that the evidence of record did not demonstrate that you were not mentally responsible for your conduct or that you should otherwise not be held accountable for your actions.

Additionally, the Board determined that the medical and clinical evidence clearly contradicts your lead poisoning and/or toxicity contentions. Your Navy records show your blood levels were regularly documented and found to be within acceptable levels.

Finally, the Board did not believe that your record was otherwise so meritorious as to deserve a discharge upgrade. 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. Moreover, 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 in 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 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.

In the absence of sufficient new evidence for reconsideration, the decision of the Board is final, and your only recourse would be to seek relief, at no cost to the Board, from a court of appropriate jurisdiction.

Sincerely,

3/24/2025

