



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

██████████
Docket No. 11375-24
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 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 14 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 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, 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 the advisory opinion (AO) furnished by a qualified mental health professional, dated 30 March 2025, and your response to the AO.

Regarding your request for a personal appearance, the Board determined that a personal appearance with or without counsel will not materially add to their understanding of the issue(s) involved. Therefore, the Board determined that a personal appearance was not necessary and considered your case based on the evidence of record.

You enlisted in the Navy with a waiver and began a period of active duty on 15 October 1996. On 2 July 1998, your driving privileges were suspended as a result of your involvement in an accident of driving while intoxicated. On 15 July 1998, you received nonjudicial punishment

(NJP) for drunken and reckless operation of a vehicle. A portion of your NJP was suspended for a period of six months. On 21 July 1998, your previously suspended portion of your NJP was vacated due to continued misconduct.

On 2 November 1999, you were evaluated by a medical officer as a result of self-referral due to problems related to alcohol abuse and apparent failure of CAAC Level I intervention. You were diagnosed with Alcohol Abuse, and Adjustment Disorder with Mixed Anxiety and Depressive Mood. On 9 December 1999, you received a second NJP for four instances of unauthorized absence (UA) and making a false official statement. Consequently, you were notified of the initiation of administrative separation proceedings by reason of misconduct due to pattern of misconduct and commission of a serious offense utilizing notification procedures. Your commanding officer (CO) recommended a General (Under Honorable Conditions) (GEN) discharge characterization of service and the separation authority approved the recommendation. On 3 February 2000, you were so discharged.

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 are Department of Veterans Affairs (VA) 70 percent service connected with Severe Depression with Anxious Distress, and Chronic PTSD, (b) the command you were sent to did not uphold your contracted E-4 automatic advancement that you signed for when entering service, (c) your discharge was an opinionated decision by your commanding officer with no facts as to why you were discharge instead of moving you to an approved billet, (d) you served honorably and changed your position from ET to Deckhand on the admiral's barge because they were short staffed, (e) your unfair discharge led you to a crushing embarrassment for 25 years of your life and never being able to start a career. 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, the Board considered the AO. The AO stated in pertinent part:

There is no evidence that the Petitioner suffered from a mental health condition or that he exhibited any symptoms of a mental health condition while in military service. There is evidence that he suffered from alcohol abuse and was not compliant with recommended treatment. He submitted VA rating noting 70% service-connection for PTSD, however no corresponding documents were submitted to review the etiology of, or rationale for the given diagnosis. His personal statement is not sufficiently detailed to provide a nexus between any mental health condition and his misconduct. 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 a post service diagnosis of PTSD. There is insufficient evidence to attribute his misconduct to PTSD."

In response to the AO, you provided additional arguments via email. After considering 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 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 GEN 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 the AO that there is insufficient evidence that your misconduct could be attributed to PTSD. As explained in the AO, even though you submitted a VA service-connection for PTSD, there was no corresponding documents submitted providing the etiology of, or rationale for the given diagnosis. 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.

Further, the Board was not persuaded by your contentions that you were treated unfairly by your command. First, the Board noted you provided no evidence, other than your statement, to substantiate your contention. Second, between July 1998 and December 1999, you were involved in multiple incidents of misconduct. In his endorsement, your CO stated, “As evidenced by his most recent NJP, [Petitioner] cannot meet the minimum standards of behavior required for U.S. Navy personnel. Balancing his average level of performance throughout his career with the relative seriousness of [Petitioner’s] impaired driving offense, I recommend he be separated with a “General Under Honorable Conditions” characterization of service.” The Board agreed with your CO that your record of misconduct indicated an inability to meet basic U.S. Navy conduct standards, regardless of your professional dissatisfaction with your assignment, and was sufficient to support your CO’s decision to process you for administrative separation. In the end, the Board determined you already received a large measure of clemency and were fortunate to receive a GEN characterization of service for conduct that would normally warrant an Other Than Honorable discharge.

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. 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 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 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,

5/1/2025

