



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

Docket No. 11552-24
Ref: Signature Date

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

The Board determined that your personal appearance, with or without counsel, would not materially add to their understanding of the issues 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 and commenced active duty on 24 July 2001. On 8 March 2002, you received non-judicial punishment (NJP) for unauthorized absence (UA). Additionally, you were issued an administrative remarks (Page 13) counseling concerning deficiencies in your performance and/or conduct. You were advised that any further deficiencies in your

performance and/or conduct may result in disciplinary action and in processing for administrative discharge. On 19 June 2002, you received NJP for UA. You were again issued Page 13 counseling and advised that any further deficiencies in your performance and/or conduct may result in disciplinary action and in processing for administrative discharge. On 23 November 2002, you received NJP for dereliction of duty. On 27 December 2002, you commenced a period of UA that ended the next day. On 31 December 2002, you commenced a period of UA that ended on 3 January 2003. Your ship deployed to the ■ from January 2003 to April 2003. On 17 April 2003, you commenced a period of UA that ended on 22 April 2003. On 27 April 2003, you commenced a period of UA that ended on 28 April 2003. On 28 April 2003, you received NJP for UA.

On 29 August 2003, you commenced a period of UA that ended on 31 August 03. On 8 October 2003, you received NJP for UA and missing movement. You were again issued Page 13 counseling and advised that any further deficiencies in your performance and/or conduct may result in disciplinary action and in processing for administrative discharge. On 15 December 2003, you commenced a period of UA that ended on 18 December 2003. On 19 December 2003, you received NJP for UA and missing movement. On 17 February 2004, you commenced a period of UA that ended on 20 February 2004. On 23 February 2004, you received NJP for UA. You were again issued Page 13 counseling and advised that any further deficiencies in your performance and/or conduct may result in disciplinary action and in processing for administrative discharge. On 21 March 2005, you commenced a final period of UA that ended on 26 March 2005.

Consequently, you were notified of pending administrative separation processing with an Under Other Than Honorable conditions (OTH) discharge by reason of misconduct due to pattern of misconduct and commission of a serious offense. You waived your rights to consult counsel, submit a statement, or have your case heard by an administrative discharge board. The separation authority subsequently directed your discharge with an OTH characterization of service and you were so discharged on 16 May 2005.

Post-discharge, you applied to the Naval Discharge Review Board (NDRB) for a discharge upgrade. The NDRB denied your request for an upgrade, on 23 March 2016, based on their determination that your discharge was proper as issued.

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 to change your discharge characterization of service and your contentions that your misconduct was a direct result of PTSD from your deployment to ■ from December 2002 to July 2003, you feared attack, spent time with Marines in-transit who were killed in combat, and participated in the employment of ship-fired weapons during your deployment, and that, post-discharge, you have rehabilitated from self-medicating and are employed as a social worker. For purposes of clemency and equity consideration, the Board considered your statement, documents from your service record, previous applications, and the mental health treatment records you provided.

As part of the Board's review process, a qualified mental health professional reviewed your

contentions and the available records and issued an AO dated 28 February 2025. The AO stated in pertinent part:

Petitioner contends he incurred Post Traumatic Stress Disorder (PTSD) and other mental health concerns during military service, which may have contributed to his separation.

No service mental health records were available for independent review. During his separation physical, he endorsed “counseling for stress about two years ago...I was removed from sub school, I was previously diagnosed with claustrophobia.” He did not raise mental health concerns during his previous request for review of his record. Petitioner contended he incurred his mental health concerns following a combat deployment to ■

Petitioner submitted a July 2024 letter from his civilian mental health provider listing diagnoses of PTSD; Generalized Anxiety Disorder; Alcohol Use Disorder, moderate, in sustained remission; and Major Depressive Disorder. The letter expressed the “clinical opinion that the client’s PTSD was caused by his military experience. His alcohol use disorder developed following his service as a way to cope with his experiences...It is also my clinical opinion that the client’s untreated psychiatric illnesses play a detrimental factor in any misconduct committed during his military service.”

Petitioner provided evidence of treatment from June 2013 to September 2023. He described traumatic events from an Iraq deployment, noting “in 2002, while at sea,...[the Petitioner] wanted to jump off the bow of his ship. He spent 3 days in a psychological hospital for evaluation.”

There is no evidence that he was diagnosed with a mental health condition in military service, or that he exhibited any psychological symptoms or behavioral changes indicative of a diagnosable mental health condition. Temporally remote to his service, VA providers have diagnosed him with PTSD and other mental health concerns attributed to Iraq combat exposure.

While it is possible that UA could be attributed to avoidance related to combat PTSD, there is insufficient evidence to attribute the Petitioner’s UA to combat PTSD. There is insufficient information regarding his combat deployment to render an opinion. His UA, which was chronic and varied throughout his military service, occurred at stateside locations and it is difficult to attribute UA solely to avoidance following a combat exposure.

The AO concluded, “There is post-service evidence from VA provider of PTSD and other mental health concerns that may be attributed to military service. There is insufficient evidence to attribute his misconduct to PTSD or another mental health condition.”

After thorough review, the Board concluded your 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 noted that you were given multiple opportunities to address your chronic and repeated conduct issues but you continued to commit misconduct and amassed seven NJPs in three-and-a-half years; which ultimately led to your OTH discharge.

The Board further noted that you had already received three NJPs, two for UA and one for dereliction of duty, prior to your ship's deployment. Additionally, the Board observed that your December 2002 and January 2003 UA periods were while your ship was in port in Virginia and preceded your deployment. The Board concurred with the AO and determined that while there is post-service evidence from a VA provider of PTSD and other mental health concerns that may be attributed to military service, there is insufficient evidence to attribute your misconduct to PTSD or another mental health condition. As explained in the AO, there is no evidence you exhibited any psychological symptoms or behavioral changes indicative of a diagnosable mental health condition and your medical evidence is temporally remote your service. The Board agreed that your UA behavior was chronic throughout your active duty service and commenced prior to the contended combat exposure. 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.

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 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,

5/12/2025

