



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

[REDACTED] Docket No. 11600-24

Ref: Signature Date

[REDACTED]

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 13 June 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 to 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 and began a period of active duty on 8 September 1987. During May 1990 and June 1990, you incurred four nonjudicial punishments (NJPJs) for a total of 24 violations of the Uniform Code of Military Justice, to include: Article 86, for failure to go to your appointed place of duty on two occasions, five unauthorized absences, and six unauthorized absences (UAs) from restriction muster; Article 90, for failure to obey the lawful command of a superior commissioned officer; Article 92, for failure to obey a lawful order and seven counts of dereliction of duty; Article 107, for making a false official statement; and, Article 115, for

malingering on 28 May 1990. Following your second NJP, you were administratively counseled that you were being retained in the Navy but were warned that your performance and conduct had been deficient and required correction action to avoid the potential of processing you for administrative discharge.

On 12 October 1990, you received a fifth NJP for an Article 86 offense due to a period of UA from 19 August 1990 to 9 September 1990 and offenses under Articles 90 and 91 for failure to obey a lawful command from a commissioned officer and a lawful order from a first class petty officer. Incident to this NJP, you were notified of processing for administrative separation by reason of misconduct due to commission of a serious offense and due to an established pattern of misconduct. You elected to voluntarily waive your right to consult legal counsel or to request a hearing before an administrative discharge board. Your commanding officer recommended that you be discharged under Other Than Honorable (OTH) conditions and the Separation Authority approved the recommendation for the primary reason of pattern of misconduct. You were so discharged on 20 November 1990.

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, to change your narrative reason for separation and corresponding code and separation authority to reflect "Secretarial Authority," and to change your reentry code to "RE-3" "or some code indicating Secretarial Authority." You contend that your punishment has served its purpose and that you have matured as a person and have become a law abiding, contributing member of society. Additionally, you allege that you were deprived of the opportunity to present matters in your defense prior to your separation and that rendered it unjust. You believe that the overall quality of your service was satisfactory, and your supervisors liked your work ethic until you were removed from your duties for medical reasons related to significant hearing loss. However, after additional testing, you were retained and returned to your duties to discover that your leadership was displeased with you. You claim that you were intentionally mistreated, and you became depressed and to start self-medicating with alcohol; which ultimately led to an attempted suicide. You deny being guilty of dereliction of duty or, contrary to your record, of being charged with malingering. You allege that you were transferred to work in the galley as punishment in spite of your rating in the nuclear power field and you attribute your UA (presumably the last period of UA) to "desperation" and a need to speak with your sister about your situation. For purposes of clemency and equity consideration, the Board considered the totality of your application; which included your DD Form 149, the legal brief, evidence of a leave authorization (incident to your pending separation), medical records, your official military personnel file (OMPF), your credit report, and five character letters/letters of recommendation.

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

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. He has provided no medical evidence in support of his claims. Unfortunately, his personal statement is not sufficiently detailed to establish clinical symptoms in service or provide a nexus with his misconduct, particularly given pre-service behavior. There are also some

inconsistencies in his service record's report of his alcohol use history with his current statement that raise doubt regarding the reliability of his recall. 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, "There is insufficient evidence of a mental health condition that may be attributed to military service. There is insufficient evidence that his misconduct may be attributed to a mental health condition."

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 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 concurred with the AO that there is insufficient evidence that your misconduct may be attributed to a mental health condition. As explained in the AO, you provided no medical evidence of your claim and it is difficult to attribute your misconduct to a mental health condition given your pre-service misconduct. 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.

With respect to your allegation that you were deprived the opportunity to present matters in your defense prior to your separation, the Board was not persuaded this contention after noting that you waived your right to consult free legal counsel and to request a hearing at an administrative board. The Board determined the presumption of regularity applies with respect to your administrative separation processing and you provided insufficient evidence to overcome the presumption that you were afforded all necessary due process.

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 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,

7/10/2025
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