



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

Docket No. 11789-24
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, 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. 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 25 January 1990. After a period of continuous Honorable service, you immediately reenlisted and commenced a second period of

active duty on 26 October 1996. On 23 July 1999, you received non-judicial punishment (NJP) for unauthorized absence (UA) and failure to obey a lawful order.

Unfortunately, the documents pertinent to your administrative separation are not in your official military personnel file (OMPF). Notwithstanding, the Board relies on a presumption of regularity to support the official actions of public officers and, in the absence of substantial evidence to the contrary, will presume that they have properly discharged their official duties. Based on the information contained on your Certificate of Release or Discharge from Active Duty (DD Form 214), you were separated on 4 May 2000 with an “Under Other Than Honorable Conditions (OTH)” characterization of service, your narrative reason for separation is “In Lieu of Trial by Court Martial,” your reentry code is “RE-4,” and your separation code is “KFS;” which corresponds to conduct triable by court martial for which the member may voluntarily separate in lieu of going to trial.

Post-discharge, you applied to the Naval Discharge Review Board (NDRB) for a discharge upgrade. The NDRB denied your request for an upgrade, on 30 October 2008, based on their determination that your discharge was proper as issued. However, the NDRB noted the omission of your continuous Honorable service annotation and directed correction of your DD Form 214¹.

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, reason for separation, and separation code. You contend that you were suffering from severe and chronic depression, anxiety, sleeping disorder, alcohol use disorder, bipolar disorder, and active suicidal ideation due to extreme racism and discrimination. For purposes of clemency and equity consideration, the Board considered the totality of your application; which included your statement, post-service medical documents, and a letter from a licensed clinical social worker.

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 12 March 2025. The AO stated in pertinent part:

Petitioner contends he incurred mental health concerns from racism and discrimination experienced during military service, which may have contributed to the circumstances of his separation.

Petitioner provided an October 2024 letter from his mental health provider listing diagnoses of “severe and chronic depression, anxiety, sleeping disorder, alcohol use disorder, bipolar disorder and suicidal ideation...It is highly likely these mental health conditions were brought on by his negative experiences in the military, specifically from experiencing severe and chronic racism while serving in the military.” He provided evidence of a six-day psychiatric hospitalization in October

¹ You may contact Commander, Navy Personnel Command to receive the correction directed by the NDRB. The Board recommends you provide a copy of the NDRB decision when submitting your request.

2023 for a diagnosis of Major Depressive Disorder, recurrent, severe without psychotic features.

There is no evidence that he was diagnosed with a mental health condition in military service. Temporally remote to his military service, a civilian provider has attributed postservice mental health concerns to experiences from military service. Unfortunately, available records are not sufficiently detailed to establish clinical symptoms in service or provide a nexus with his misconduct. In particular, there is insufficient information regarding the Petitioner's misconduct that would have been addressed in court martial to render an opinion regarding mental health concerns and the alleged misdeeds.

The AO concluded, "There is post-service evidence from a civilian mental health provider of a mental health condition that may be attributed to military service. There is insufficient evidence to attribute the Petitioner's misconduct to a 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 NJP and separation in lieu of trial by court-martial, 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 an opportunity to address your conduct issues but you continued 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. Finally, the Board concurred with the AO and determined that, while there is post-service evidence from a civilian mental health provider of a mental health condition that may be attributed to military service, there is insufficient evidence to attribute your misconduct to a mental health condition. As explained in the AO, there is no evidence you were diagnosed with a mental health condition in military service and your post-discharge evidence is temporally remote to your military service. The Board agreed that there is insufficient information regarding your misconduct to render an opinion regarding mental health concerns and the alleged misdeeds. 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

