



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

Docket No. 485-25
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 10 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 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 afforded an opportunity to submit an AO rebuttal, 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 began a period of active duty on 13 April 1998. On 5 November 1998, you received non-judicial punishment (NJP) for absence without leave in violation of Article 86, Uniform Code of Military Justice (UCMJ). As punishment, you were adjudged 30 days restriction, 30 days extra duties, forfeiture of pay (FOP), and reduction in rank (RIR) to E-2.

On 16 February 1998, you received your second NJP for a period of desertion totaling 49 days in violation of Article 85, UCMJ. As punishment, you were adjudged 45 days restriction, 45 days extra duties, FOP, and RIR to E-1. Additionally, you were issued an administrative remarks (Page 13) retention warning counseling concerning deficiencies in your performance and/or conduct as evident by your violation of Article 85, Uniform Code of Military Justice (UCMJ). The Page 13 expressly advised you that any further deficiencies in your performance and/or conduct may result in disciplinary action and in processing for administrative separation.

On 12 August 1999, you received your third NJP for absence from your appointed place of duty in violation of Article 86, UCMJ. As punishment, you were adjudged FOP and 30 days correctional custody. On 14 August 1999, you were issued a Page 13 retention warning counseling concerning deficiencies in your performance and/or conduct as evident by your violation of Article 86, UCMJ.

On 16 September 2001, you were advanced in rank to Electrician's Mate Third Class Petty Officer (EM3). On 12 April 2004, you received your fourth NJP for failure to obey written order in violation of Article 92, UCMJ. As punishment, you were adjudged 60 days restriction and RIR to E-3. On 5 May 2004, your recommendation for advancement to Electrician's Mate Second Class Petty Officer (EM2) was withdrawn due to your violation of Article 92, UCMJ.

On 9 September 2004, at the expiration of your active obligated service, you were issued a Certificate of Release or Discharge from Active Duty (DD Form 214) that annotated your characterization of service as Honorable and your grade, rate or rank as EMFN (E-3).

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 your DD Form 214 to be corrected to reflect EM2 (E-5) and contentions that: (1) since experiencing a head injury in June 1998 you have experienced memory loss and paranoia, (2) you did not commit a crime of any type to a point where you should not be advanced to a higher rank, and (3) during 2018, your rank was corrected and your DD Form 214 annotated EM2; however, your DD Form 214 was corrupted by the recruiting station of Birmingham, AL. For purposes of clemency and equity consideration, the Board considered the totality of your application; which included your DD Form 149 and the evidence you provided in support of it.

As part of the Board's review, a qualified mental health professional reviewed your request and provided the Board with an AO on 22 April 2025. The AO noted in pertinent part:

There is insufficient evidence of a diagnosis of a mental health condition that may be attributed to military service. Temporally remote to his military service, he has provided medical records that list a note a reported head injury that may have occurred during military service. However, there is insufficient evidence of residual symptoms that would be consistent with a Traumatic Brain Injury (TBI). Unfortunately, there are inconsistencies in the records that raise doubt regarding the Petitioner's candor or the reliability of his recall over time. Available records are not sufficiently detailed to establish clinical symptoms in service or provide a nexus with his misconduct.

The AO concluded, “There is insufficient evidence of a diagnosis of TBI or a mental health condition that may be attributed to military service. There is insufficient evidence that his misconduct may be attributed to TBI or 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 evident by your NJPs, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and concluded it showed a complete disregard for military authority and regulations. Further, the Board discerned no impropriety or inequity in your paygrade at the time of your completion of required active service and observed that your reduction in paygrades was supported by properly documented NJPs.

Additionally, the Board concurred with the AO that there is insufficient evidence of a diagnosis of TBI or a mental health condition that may be attributed to military service and there is insufficient evidence that your misconduct may be attributed to TBI or a mental health condition. As the AO explained, there are inconsistencies in the records that raise doubt regarding your candor or the reliability of your recall over time. The Board agreed there is insufficient evidence of a diagnosis of a mental health condition that may be attributed to military service. Finally, the Board determined the medical records provided are too temporally remote from your military service. 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, 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,

6/27/2025

