



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

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Docket No. 488-25  
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 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 27 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.

The Board determined that your personal appearance, with or without counsel, would not materially add to the understanding of the issues involved. Therefore, the Board determined a personal appearance was not necessary and considered your case based on evidence of record.

You enlisted in the Navy after being granted a waiver for your pre-service arrest history and began a period of active duty on 3 August 1994. On 28 June 1995, you received nonjudicial punishment (NJP) for violating Article 86 of the Uniform Code of Military Justice (UCMJ) after failing to go at the time prescribed to your appointed place of duty. On 7 March 1996, you received a second NJP for five specifications of Article 86 violations. You were subsequently notified of processing for administrative separation by reasons of misconduct due to commission

of a serious offense and due to a pattern of misconduct. You elected to waive your right to a hearing before an administrative separation board and then absented yourself from a restricted status, without authority, on 3 April 1996. On 22 April 1996, you were apprehended as a result of a motor vehicle accident. Your discharge under Other Than Honorable (OTH) conditions was approved, for the primary basis of pattern of misconduct, via naval message from Naval Personnel Command on 16 April 1996. Prior to your separation, you were convicted by Summary Court-Martial (SCM), on 17 May 1996, for UCMJ violations to include Article 134, due to breaking restriction, and Article 85, for desertion until apprehended. You were then discharged under OTH conditions on 22 May 1996.

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 and contention that your misconduct was attributable to trauma during your military service. In support of your application and for the purpose of clemency and equity consideration, you submitted medical records related to your contended traumatic brain injury (TBI) and certifications of post-service accomplishments.

Because you contend that post-traumatic stress disorder (PTSD) or a TBI affected the circumstances of your discharge, the Board also considered the AO. The AO stated in pertinent part:

There is evidence that the Petitioner received a serious head injury while in a UA status during his military service. It is possible that the Petitioner may have received a diagnosis of PTSD due to the car accident, although there is no medical evidence of the diagnosis. Unfortunately, it is not possible to attribute his misconduct to his head injury or symptoms of PTSD, given the events occurred after his misconduct.

The AO concluded, "There is in-service evidence of a head injury. There is post-service evidence from the Petitioner of a diagnosis of PTSD that may be attributed to the fatal accident in which he sustained the head injury. There is insufficient evidence to attribute his misconduct to PTSD or TBI."

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 and SCM, 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. Additionally, the Board concurred with the AO that there is insufficient evidence to attribute your misconduct to PTSD or TBI. As explained in the AO, your misconduct occurred prior to the events that may have resulted in TBI or PTSD. 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.

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,

7/16/2025

