



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

Docket No. 0993-25
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 30 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, 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.

You enlisted in the Navy Reserve and commenced active duty on 26 November 1979. On 16 May 1980, you commenced a period of unauthorized absence (UA), during which you were declared a deserter, that ended in your surrender on 26 January 1982. On 9 March 1982, you submitted a written request for an undesirable discharge in order to avoid trial by court-martial for UA from 16 May 1980 to 26 January 1982. Prior to submitting this request, you conferred with a qualified military lawyer at which time you were advised of your rights and warned of the probable adverse consequences of accepting such a discharge. Your request was granted, and

your commanding officer was directed to issue you an under Other Than Honorable conditions (OTH) discharge. On 23 March 1982, you were so discharged.

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 you suffered from mental illness that mitigated your misconduct. For purposes of clemency and equity consideration, the Board considered the totality of your application; which included your DD Form 149, your DD Form 214, and a 1982 letter from your mental health provider.

As part of the Board's review process, a qualified mental health professional reviewed your contentions and the available records and issued an AO on 20 May 2025. The AO stated in pertinent part:

Petitioner contends he incurred mental health issues during military service, which may have contributed to the circumstances of his separation from service.

Petitioner entered active-duty Navy service in November 1979.

In January 1980, he presented to medical after making a superficial laceration to his wrist. Note reads, "Man does not like the Navy – desires to be put off of the next port and claims will attempt suicide within 5 minutes of being on the boat. He does not have a definite plan of suicide."

In his request for discharge, Petitioner wrote the following:

"Shortly after training camp, I began having severe headaches and jitters. My nerves were unraveled. I could not relate to persons in authority. In fact, I reacted in such a manner to their giving me orders and talking to me as a slave that I wanted to hurt someone or myself. I went into a depression. I thought I was going to crack up...I returned to ■■■■■ and sought psychiatric help at a local mental health clinic. I was insecure and apprehensive. After treating with ■■■■■ for a while, I began to regain my composure. I was able to face and to talk to people again. ■■■■■ told me that my problems were from my experiences in the Navy and that I could not cope with a military life. He explained that returning to the Navy could result in my psychological problems starting all over again."

Psychiatric note (date illegible) reads, "There was no evidence that the service member was suffering from a mental disease or deficit at the time of the alleged incidents..."

Petitioner submitted the following items in support of his claim:

- Letter from psychologist (January 1982) noting treatment for symptoms of depression and anxiety

There is no evidence that the Petitioner was diagnosed with a mental health condition during his military service. He did exhibit some manipulative behavior as evidenced by threatening suicide if Navy personnel did not allow him to leave his ship/station. He then elected to go on a 19-month period of unauthorized absence (UA). Sometime during the latter part of his UA, he sought mental health whereby it was noted that he displayed symptoms of depression and anxiety, however, there is no evidence that a formal diagnosis thereof was made. Furthermore, based on the notes in conjunction with his displayed behaviors, it appears as though he would have met criteria for either a Personality Disorder or Adjustment Disorder – both of which are not amenable to the requirements of the Navy. His personal statement is not sufficiently detailed to provide a nexus between his misconduct between any mental health conditions.

The AO concluded, “it is my clinical opinion that there is insufficient evidence of a mental health condition that existed in service (aside from possible Personality or Adjustment Disorder). There is insufficient evidence to attribute his 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 discharge in lieu of trial by court-martial, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the likely negative impact your six hundred twenty-day UA had on the good order and discipline of your command. The Board also noted that the misconduct that led to your request to be discharged in lieu of trial by court-martial was substantial and determined that you already received a large measure of clemency when the convening authority agreed to administratively separate you in lieu of trial by court-martial; thereby sparing you the stigma of a court-martial conviction and possible punitive discharge. Additionally, the Board concurred with the AO and determined that there is insufficient evidence of a mental health condition that existed in service and insufficient evidence to attribute your misconduct to a mental health condition. As explained in the AO, while you may have displayed some symptoms of depression and anxiety during your active service, the medical notes, when considered in conjunction with your displayed behaviors, supports the criteria for either a Personality Disorder or Adjustment Disorder. 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 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,

7/14/2025

