



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

██████████  
Docket No. 1126-25  
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 25 July 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 and your response to the AO.

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 initially enlisted in the Navy Reserve and commenced a period of active duty for training on 19 October 1992. After completing your initial training on 11 February 1993, you were released from active duty and assigned to your reserve unit. You then enlisted in the Navy and began a period of active duty in March 1993. In April 1994, you were placed on the remedial exercise program after failing the run portion of your physical fitness test. Then, in July 1994, you were issued an administrative counseling warning that you were being retained on active duty but you

needed to correct your conduct deficiencies with respect to your dishonorable failure to pay debts.

You failed cycle three of your physical readiness standards assessment and were notified in a counseling entry that you would be processed for administrative separation due to failure to meet minimum physical readiness standards. Although your official military personnel file (OMPF) does not contain further documentation of disciplinary action or administrative counseling, on 31 January 1995, you were assigned 2.8 as a conduct mark, which fell below the minimum average mark necessary to qualify for a presumptively Honorable period of enlistment<sup>1</sup>.

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. Your Certificate of Release or Discharge from Active Duty (DD Form 214) reveals that you were separated, on 7 August 1995, with an Other Than Honorable (OTH) characterization of service, narrative reason for separation of "Pattern of Misconduct," separation code of "HKA," and reentry code of "RE-4."

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 your contentions that you did nothing wrong during your active duty period of service but were summarily discharged, as an act of retaliation, three weeks after you reported to your executive officer that you had been called a racial name by a first class petty officer. With respect to the underlying incident, you specifically describe that the exact words used by the Sailor were that he was "tired of doing [racial expletive] work;" which you felt amounted to him calling you that term to your face. You felt emotionally traumatized by this interaction. You believe that the Navy stole your destiny and submitted evidence of a decision by the Department of Veterans Affairs (VA) finding your active duty service to be Honorable for VA purposes. You also alleged that you were unaware of your rights due to youth and naivety and that you were not adequately informed of your rights by a judge advocate. Additionally, you state that you are a juris doctor candidate, own an independent television broadcasting station, thought your character of discharge determination from the VA applied to all benefits, but were denied education benefits. 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.

Because you contend that post-traumatic stress disorder (PTSD) or another mental health condition affected the circumstances of the misconduct which resulted in your discharge, the Board also considered the AO. The AO stated in pertinent part:

There is no evidence that the Petitioner was diagnosed with a mental health condition during her military service or that she suffered from any symptoms incurred by a mental health condition. She submitted post service evidence of a diagnosis of PTSD; however, the documentation submitted does not specify the rationale for/etiology of the diagnosis. Her personal statement is not sufficiently

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<sup>1</sup> However, your VA decision documented additional misconduct not in your OMPF. This included a nonjudicial punishment (NJP) for violation of Articles 86 and 92 of the Uniform Code of Military Justice on 7 August 1995.

detailed to provide a nexus between her misconduct and a mental health condition. Additional records (e.g., active duty medical records, post-service mental health records describing the Petitioner's diagnosis, symptoms, and their specific link to her separation) may aid in rendering an alternate opinion.

The AO concluded, "it is my clinical opinion that there is insufficient evidence of a mental health condition that existed in service. There is insufficient evidence to attribute her misconduct to any mental health condition."

In response to the AO, you provided additional evidence in support of your application. After reviewing your rebuttal evidence, the AO remained unchanged.

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 relied upon the presumption of regularity. As discussed above, 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. In your case, the Board determined the evidence you presented was insufficient to overcome the presumption that you were properly discharged for your misconduct. Finally, the Board noted that VA eligibility determinations for health care, disability compensation, and other VA-administered benefits are for internal VA purposes only. Such VA eligibility determinations, disability ratings, and/or discharge classifications are not binding on the Department of the Navy and have no bearing on previous active duty service discharge characterizations.

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,

8/14/2025

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