



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

701 S. COURTHOUSE RD

ARLINGTON, VA 22204

[REDACTED] Docket No. 2722-25

Ref: Signature Date

[REDACTED]

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.

Because your application was submitted with new evidence not previously considered, the Board found it in the interest of justice to review your application. A three-member panel of the Board, sitting in executive session, considered your application on 26 September 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 25 August 2017 guidance from the Office of the Under Secretary of Defense for Personnel and Readiness (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 twice previously applied to this Board for a discharge upgrade. In your initial application, you contended that your cousin had died in an accident several weeks prior to a serious fire aboard your ship, which resulted in multiple casualties, affected your mental health, and contributed to your motorcycle accident. The Board reviewed your request for relief on 23 April 2010 and denied your request.

Your requested reconsideration with additional contentions that you were hospitalized at the time of your unauthorized absence (UA) and you believe that you remained under military control during that hospitalization. You also asserted that you were incarcerated after being pulled over by authorities in [REDACTED] and were subsequently forced to sign paperwork in order to be allowed to go home. You asserted that the severe injuries from your motorcycle accident and trauma from your brother's death have resulted in post-traumatic stress disorder (PTSD). The Board reviewed your request on 25 August 2024 and again denied relief. The Board found insufficient evidence to substantiate your claims; which were inconsistent with the evidence of record regarding your hospitalization, treatment history, and apprehension by civil authorities. The summary of your service remains substantially unchanged from that addressed in the Board's previous decisions.

The Board again 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 address issues pertaining to your disability and PTSD claims. You continue to contend that your UA period was not your fault because you were still under military control and that your actions and decision making abilities were affected by your PTSD connected to the ship-board fire and your subsequent injuries from your traumatic motorcycle accident. In support of your current request for reconsideration, you submitted additional post-service medical records. For purposes of clemency and equity consideration, the Board considered the totality of your application; which consisted of your DD Form 149 and the evidence you provided in support of your application.

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

Post-service notes from [REDACTED] [REDACTED] Community Service Board note inconsistencies: For example, author noted that Petitioner served in Iraq in 2001 [error] and that he suffered a head trauma "2-3 years ago," which would have been post-service. There is no evidence that the Petitioner sustained a TBI while in service. It is possible that he sustained a TBI post-service and that this was incorrectly translated in mental health notes. Furthermore, it appears as though the Petitioner did suffer from post-service mental health conditions and possible psychosis (at least in 2010 timeframe), however there is no evidence of any mental health conditions or symptoms thereof while in service. The Petitioner's personal statement is not sufficiently detailed to provide a nexus between his misconduct and any mental health condition. During administrative proceedings, he admitted that he chose to stay UA and there was no evidence that he was suffering from a mental illness during that time. Additional records (e.g., active duty medical records, post-service mental health records describing the Petitioner's diagnosis, symptoms, and their specific link to his separation) would 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 his

misconduct to a mental health condition.¹

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 non-judicial punishment and request to be discharged 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 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. The Board again 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 again concurred with the clinical opinion of the AO regarding the lack of evidence of a nexus between your contended PTSD and the misconduct which resulted in your separation in lieu of trial; particularly because you admitted at the time that you chose to stay UA. In that regard, the Board further found insufficient evidence to substantiate your claim that you were hospitalized rather than UA, as you were last seen in an outpatient status on 30 September 1991. Likewise, the Board noted that you did not submit other evidence of your contended traumas. The Board applied liberal consideration to your claim that you suffered from a mental health condition, and to the effect that this condition may have had upon the conduct for which you were discharged in accordance with the Hagel and Kurta Memos. Applying such liberal consideration, the Board found insufficient evidence of a diagnosis of mental health condition that may be attributed to military service. This conclusion is supported by the AO and the fact your medical evidence is temporally remote to your service. Additionally, even applying liberal consideration, the Board found insufficient evidence to conclude that the misconduct for which you were discharged was excused or mitigated by your mental health condition. In this regard, the Board simply had insufficient information available upon which to make such a conclusion. 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

¹ The Board noted that this conclusion substantially mirrors the conclusion from a previous AO issued as part of the Board's 23 August 2024 adjudication of your first reconsideration request.

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,

11/19/2025

