



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
701 S. COURTHOUSE RD
ARLINGTON, VA 22204

[REDACTED]
Docket No. 2957-25
Ref: Signature Date

[REDACTED]
[REDACTED]
[REDACTED]

Dear [REDACTED]

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 24 November 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 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.

You enlisted in the Navy and began a period of active duty on 28 October 2005. On 21 September 2008, you were subject to nonjudicial punishment (NJP) for violating Article 111 of the Uniform Code of Military Justice (UCMJ) due to drunken operation of a vehicle. You were also issued administrative counseling advising you that you were being retained but further misconduct could result in administrative separation. You received a second NJP, on 26 February 2010, for another Article 111 offense, drunken driving, and an Article 92 offense for failure to obey an order or regulation. You were subsequently notified of processing for administrative separation. However, in spite of the bases for your proposed separation being misconduct due to commission of a serious offense and pattern of misconduct, you were

processed locally under notification procedures with a least favorable characterization of General (Under Honorable Conditions) (GEN) rather than via board procedures with the potential of an Other Than Honorable (OTH) characterization. On 12 March 2010, you were discharge with a GEN characterization of service based on the primary reason of commission of a serious offense.

You previously applied to the Naval Discharge Review Board (NDRB) contending that a less than fully Honorable characterization was unduly harsh after having service for more than four years of active duty and for having committed “relatively minor infractions” which occurred out of uniform and caused no injury. The NDRB initially considered your request, on 16 October 2013, via a documentary review and, after its initial denial, granted a hearing on 26 September 2014. It again denied your request after determining your discharge was proper. You then received an additional, automatic review by NDRB review on 7 December 2023, pursuant to the settlement agreement in *Manker v. Del Toro*, contending that mental health issues mitigated your misconduct and rendered your characterization unjust. The NDRB again denied your final review after finding that you did not have a condition or experience, that existed during military service, that might mitigate your underlying misconduct or excuse your discharge.

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 medical and mental health conditions significantly affected your performance of duty during your time in service, to include struggles with ADHD, which challenged you with focus, organization, and follow through with tasks. You also contend that you experienced anxiety and depression which impacted your ability to adapt to the demands of military life but were not recognized or diagnosed during your service. 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 a mental health condition affected the circumstances of your discharge, the Board also considered the AO. The AO stated in pertinent part:

There is no evidence that the Petitioner suffered from a mental health condition or any symptoms incurred by a mental health condition while in military service. He submitted one post-service mental health record; however, it does not note any mental health diagnoses or conditions. His personal statement is not sufficiently detailed to provide a nexus between his in-service misconduct and any mental health condition. Additional records (e.g., active duty medical and mental health 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.”

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 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 an opportunity to correct your conduct deficiencies but chose to continue to commit misconduct; which led to your GEN 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. Whereas you have previously described your misconduct as minor, the Board adamantly disagreed and found that driving while impaired by the influence of alcohol constitutes significant risks to other motorists and pedestrians, and a careless disregard for the safety of others; regardless of whether your two in-service offenses in that regard fortunately did not result in injury. Further, the Board noted that you have already been afforded considerably clemency with respect to your honorable years of service prior to your NJP offenses, as evidenced by your chain of command's decision to process you locally via notification procedures without the possibility of an OTH discharge; which is normally warranted for serious misconduct

Additionally, the Board concurred with the clinical opinion of the AO regarding the lack of objective evidence of your contended mental health concerns. 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 does not note any mental health diagnoses or conditions. Further, the Board agreed with the AO that your personal statement is not sufficiently detailed to provide a nexus between your inservice misconduct and any mental health condition. 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 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,

12/12/2025

