



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

██████████
Docket No. 3987-25
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 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 15 September 2025. The names and votes of the panel members will be furnished upon request. Your allegations of error or 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)/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 and your response to the AO.

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

During your enlistment processing you disclosed two speeding infractions. You enlisted in the Navy and began a period of active duty on 5 June 1991. On 31 January 1994, you were convicted by a Summary Court-Martial (SCM) of violating Article 121 of the Uniform Code of Military Justice (larceny), and were sentenced to forfeit one-half month's pay for one month, hard labor without confinement for 30 days, and reduction in rank to E-3. Consequently, you

were notified that you were being recommended for administrative discharge from the Navy for the commission of a serious offense (COSO); at which time you subsequently waived your rights to consult with counsel and to present your case before an administrative discharge board. Ultimately, the separation authority directed you be discharged with an Other Than Honorable (OTH) characterization of service and you were so discharged on 13 May 1994.

The Board carefully considered all potentially mitigating factors to determine whether the interest 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 for an upgrade of your discharge and your contentions that you incurred mental health concerns from harassment during military service. Specifically, you experienced two traumatic events followed by harassment from your superiors during service. 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.

Based on your assertions that you incurred mental health concerns from harassment during military service, which may have contributed to the circumstances of your separation, a qualified mental health professional reviewed your request for correction to your record and provided the Board with an AO on 5 August 2025. The AO stated in pertinent part:

There is no evidence that he was diagnosed with a mental health condition in military service, or that he exhibited any psychological symptoms or behavioral changes indicative of a diagnosable mental health condition. Throughout his disciplinary processing, there were no concerns raised of a mental health condition that would have warranted a referral for evaluation. Temporally remote to his military service, he has been granted service connection for a mental health condition. Unfortunately, available records are not sufficiently detailed to establish a nexus with his misconduct, particularly as theft is not a typical symptom of a mental health concern. Additional records (e.g., post-service mental health records describing the Petitioner's diagnosis, symptoms, and their specific link to his misconduct) may aid in rendering an alternate opinion.

The AO concluded, "it is my considered clinical opinion that there is post-service evidence from the VA of a mental health condition that may be attributed to military service. There is insufficient evidence to attribute his misconduct to a mental health condition."

In response to the AO, you submitted rebuttal evidence in support of your application. Upon reviewing the rebuttal evidence, the AO remained unchanged. It was noted that insufficient medical evidence of chronic symptoms from military service to the current record of potential TBI symptoms exist to attribute the current medical diagnosis to your military service.

After a thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined your misconduct, as evidenced by your SCM, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and concluded it showed a complete disregard for military authority and regulations. The Board disagreed with your contention that you were discharged from the Navy despite not doing anything wrong. As explained in your administrative separation

notification letter, you were being processed for separation by reason of commission of a serious offense “as evidenced by your Summary Court-Martial on 31 January 1994...” While your record did not contain details regarding the larceny offense for which you were found guilty at SCM, the Board noted you were sentenced to the maximum confinement period for your misconduct.

Further, the Board applied liberal consideration to your claim that you suffered from a mental health condition and TBI, and to the effect that these conditions 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 and TBI 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 or TBI. 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,

11/18/2025
