



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

██████████
Docket No. 4165-25
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 16 January 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 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 your personal appearance was not necessary and considered your case based on evidence of record.

The following is the relevant factual background of your case based upon review of your naval record and/or the matters provided with your application:

1. You enlisted in the Navy and began a period of active duty on 1 March 2005. On 29 February 2008, were awarded the Good Conduct medal.

2. On 11 April 2008, you were subject to nonjudicial punishment (NJP) for violating Article 92, Uniform Code of Military Justice (UCMJ), for failure to obey a lawful order. You were also issued administrative counseling warning you that further misconduct could result in administrative separation.

3. On 28 October 2008, you received a second NJP for violating Article 86, UCMJ, due to a 30-minute unauthorized absence, and Article 92, for dereliction of duty.

4. Unfortunately, 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 from the Navy, on 13 February 2009, with an Other Than Honorable (OTH) characterization of service, narrative reason for separation of "Misconduct Serious Offense [sic]," separation code of "HKQ," and reentry code of "RE-4." Your separation code reflects that you elected to voluntarily waive your right to a hearing before an administrative board.

5. You previously applied to the Naval Discharge Review Board (NDRB) contending that a pattern of misconduct was an improper basis; however, the NDRB noted that you were separated by reason of commission of a serious offense. You also submitted evidence of post-service character for consideration of clemency and contended that you had been denied dental treatment. Your request was considered on 24 January 2017 and was denied.

After careful review, the Board reached the following conclusions and denied your application for relief.

The Board initially concluded you were appropriately processed for administrative separation based on your record of misconduct. While the Board carefully considered your contention for mitigation and argument that you were not responsible for some of your misconduct, the Board noted you provided no evidence, other than your statement, to substantiate your claim of innocence. Therefore, the Board determined the presumption of regularity applies to the finding that you committed the misconduct that formed the basis of your administrative separation and were properly separated for misconduct with an OTH characterization of service.

Because you contend that post-traumatic stress disorder (PTSD) or another 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 was diagnosed with a mental health condition while in military service or that he suffered from any symptoms incurred by a mental health condition. He submitted VA evidence of a diagnosis of PTSD. The corresponding DBQ notes in-service medical records corroborate his anecdote of having been assaulted in service; however, there are no medical notes contained within his available service record for review. Furthermore, the petitioner did not cite any traumatic events as having mitigated his misconduct in a 2017 NDRB, or in any separation proceedings. 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) may aid in rendering an alternate opinion.

The AO concluded, “it is my clinical opinion that there is sufficient evidence of a post-service diagnosis of PTSD. There is insufficient evidence to attribute his misconduct to a mental health condition (PTSD).”

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 Memo. Applying such liberal consideration, the Board found sufficient evidence of a diagnosis of mental health condition that may be attributed to military service. This conclusion is supported by the AO and your post-service medical evidence. However, 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 and recognized the same concerns raised in the AO. 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.

In addition to applying liberal consideration to your claimed mental health condition and its potential effect upon your conduct in accordance with the Hagel and Kurta Memos, the Board also considered the totality of the circumstances to determine whether equitable relief is warranted in the interests of justice in accordance with the Wilkie Memo. In this regard, the Board considered, amongst other factors, the totality of your service, your need for veterans’ benefits, the non-violent nature of your misconduct, your relative youth and immaturity at the time of your misconduct, the negative effect your discharge has had on your life, your rehabilitation efforts, your post-service record of accomplishments, your service to your community, the character references you provided for review, your contentions that you were treated unfairly, and the passage of time since your discharge.

The Board found that the mitigating factors were not nearly sufficient to justify any equitable relief. Specifically, the Board found that the severity of your misconduct far outweighed all of the mitigating factors combined. The Board 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. The Board concluded your conduct was sufficiently pervasive and serious to negatively affect the good order and discipline of your command. In addition, the Board noted that, although one’s service is generally characterized at the time of discharge based on performance and conduct throughout the entire enlistment, the conduct or performance of duty reflected by incidents of misconduct during a brief period service may provide the underlying basis for discharge characterization. The Board acknowledged you did not commit misconduct and earned a Good Conduct Medal during your first three years of service. However, they found the misconduct you committed during your last year of service was sufficiently serious to support your assigned characterization of service. While the Board agreed

that flawless service is not required to receive an Honorable characterization of service, the nature and gravity of your misconduct led them to conclude that your service was not Honorable. Finally, the Board believed that it would be unjust to characterize your less than honorable service in the same manner as the service of the thousands of service members who, unlike you, honorably completed their enlistments without engaging in misconduct warranting the early curtailment of their service. In their opinion, it would also create an unwarranted and inaccurate assessment of your period of service that could potentially undermine the integrity of the Navy's personnel system. Therefore, the Board did not find an upgrade of your discharge to General (Under Honorable Conditions) or Honorable to be warranted in the interests of justice.

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,

2/18/2026

