



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

██████████  
Docket No. 4304-25  
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 13 February 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 25 August 2017 guidance from the Office of the Under Secretary of Defense for Personnel and Readiness (Kurta Memo) and 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 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 29 October 2001.
2. After serving for three years without incident, you were awarded the Good Conduct medal.
3. On 12 January 2005, you received your first nonjudicial punishment (NJP) for violations of the Uniform Code of Military Justice (UCMJ) that included Article 123a, for making, drawing, or uttering a check without sufficient funds, and Article 134, for committing adultery. This NJP was followed by a letter of instruction regarding your financial responsibilities.

4. On 9 May 2005, you received a second NJP for violating Article 134, UCMJ, due to failure to pay just debts which included your rent and associated legal fees.

5. Consequently, you were notified of processing for administrative separation by reason of misconduct due to commission of a serious offense. Because you were informed via notification procedure rather than board procedure, the least favorable characterization of service you could receive was General (Under Honorable Conditions) (GEN). You did not submit a statement in rebuttal to your proposed discharge or characterization of service.

6. In his 13 May 2005 naval letter recommending your administrative separation for misconduct, your commanding officer commented that you were unwilling or incapable of adhering to the rules and regulations of the UCMJ. Ultimately, you were so discharged on 17 May 2005.

7. Post-service, you applied to the Naval Discharge Review Board (NDRB) requesting an upgrade of your characterization of service to improve employment opportunities. You also asserted that you had been close to having your finances fixed but were not given enough time to remedy it prior to being discharged. Your request was considered on 8 November 2006 and denied. The NDRB's decision found your discharge proper and equitable, given that your offenses were serious enough to have warranted a punitive discharge at court martial. You were further advised that there is no requirement or law that grants recharacterization solely for the purpose of enhancing employment opportunities.

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, the Board noted you did not deny committing the misconduct. 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 no error exists with your GEN characterization of service.

However, because you raised the issue of mental health, the Board also requested an AO. The AO stated in pertinent part:

There is no evidence that he was diagnosed with a mental health condition in military service. Temporally remote to his military service, he has been granted service connection for a mental health condition. Although it is possible that financial mismanagement and sexual promiscuity could be considered prodromal symptoms of a mental health condition, there is insufficient information regarding his mental health history to make that determination. 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 that his misconduct may be attributed to a mental health condition."

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 Kurta 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 temporally remote 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 Kurta Memo, 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, your contentions, the totality of your service, 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, your mental health issues, 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. In particular, 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 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. Additionally, the Board found that you already received a large measure of clemency when you were processed using notification procedures and received a GEN characterization of service despite possessing a record of misconduct that routinely resulted in an Other Than Honorable discharge. While the Board noted 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. Therefore, the Board did not find an upgrade of your discharge to Honorable to be warranted in the interests of justice. While the Board commends you for your post-service accomplishments, 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,

2/24/2026

