



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

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Docket No. 4790-25
Ref: Signature Date

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Dear Petitioner:

This is in reference to your application for correction of your spouse's naval record pursuant to Section 1552 of Title 10, United States Code. 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 on 24 February 2026, has carefully examined your current request. 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 this 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, 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), 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 an advisory opinion (AO) furnished by a qualified mental health professional on 5 January 2026. Although you were provided an opportunity to comment on the AO, you chose not to do so.

Your spouse previously applied to this Board for a discharge upgrade but was denied on 16 October 2018. In that application, your spouse argued that he needed veterans' benefits due to existing medical conditions and contended that his post-service character was exemplary. He also stated his reasons for committing misconduct were due to family hardships. The summary of his service substantially unchanged from that addressed in the Board's previous decision.

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

The Board initially concluded your spouse was appropriately processed for administrative separation based on his record of misconduct. While the Board carefully considered your contention for mitigation, the Board noted you or your spouse did not deny committing the misconduct that formed the basis for his administrative separation and OTH discharge. Therefore, the Board determined the presumption of regularity applies to his administrative separation and no error exists with his record.

However, because you raised the issue of mental health, the Board requested an AO. As part of the Board's review, a qualified mental health professional reviewed your request and provided the Board with an AO. The mental health professional stated in pertinent part:

There is no evidence that the Petitioner spouse was diagnosed with or suffered from any mental health conditions while in service. You did not submit any medical evidence in support of your claim. Your personal statement is not sufficiently detailed to provide a nexus between any mental health condition and your spouse's misconduct. Additional records (e.g., active-duty medical records, post-service mental health records describing your spouse'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 insufficient evidence of PTSD or any mental health condition that existed in service. There is insufficient evidence to attribute his misconduct to any mental health condition."

The Board applied liberal consideration to your claim that your spouse suffered from a mental health condition, and to the effect that this condition may have had upon the conduct for which he was 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 you provided no medical evidence in support of your claim. Additionally, even applying liberal consideration, the Board found insufficient evidence to conclude that the misconduct for which your spouse discharged was excused or mitigated by a 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 spouse's misconduct was somehow attributable to any mental health conditions, the Board unequivocally concluded that the severity of his serious misconduct more than outweighed the potential mitigation offered by any mental health conditions.

In addition to applying liberal consideration to your claimed of mental health condition and its potential effect upon your spouse's 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, your contentions, the totality of your spouse's service, the non-violent nature of his misconduct, his relative youth and immaturity at the time of his misconduct, his service in Vietnam, the negative effect his discharge has had on his life, his post-service rehabilitation efforts, his claimed mental health issues, and the passage of time since his 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 spouse's misconduct far outweighed all of the mitigating factors combined. In particular, the Board noted that the misconduct that led to his request to be discharged in lieu of trial by court-martial was substantial and determined that he already received a large measure of clemency when the convening authority agreed to administratively separate him in lieu of trial by court-martial; thereby sparing him the stigma of a court-martial conviction and possible punitive discharge. Further, the Board observed he was given several opportunities to correct his conduct deficiencies but chose to continue to commit misconduct; which led to his OTH discharge. His conduct not only showed a pattern of misconduct but was sufficiently pervasive and serious to negatively affect the good order and discipline of his command. Finally, the Board believed that it would be unjust to characterize his less than honorable service in the same manner as the service of the thousands of service members who, unlike him, 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 spouse's discharge to General (Under Honorable Conditions) or Honorable to be warranted in the interests of justice. Ultimately, the Board concluded the mitigation evidence you provided was insufficient to outweigh the seriousness of your spouse's misconduct.

Accordingly, given the totality of the circumstances, the Board determined that your request does not merit relief.

The Board wished to express their deepest condolences for your loss.

You are entitled to have the Board reconsider its decision upon 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 attaches 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,

3/9/2026

