



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

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Docket No. 4961-25
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 your application was not filed in a timely manner, the Board found it in the interest of justice to waive the statute of limitations and consider your case on its merits. A three-member panel of the Board, sitting in executive session, considered your application on 27 February 2026. 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 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 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 10 March 2010.
2. On 7 July 2011, you were administratively counseled due to failing your physical fitness assessment.
3. Although most records pertaining to your administrative separation proceedings were not retained in your official military personnel file (OMPF), based on the documents in your OMPF, you were processed for administrative separation by reason of misconduct due to a civil

conviction, waived your right to a hearing before an administrative separation board, and were discharged under Other Than Honorable conditions on 5 November 2012. A comment in your final performance evaluation documented that your civil offense was traveling to meet a minor to commit unlawful acts, using a two-way communication device to facilitate a felony, soliciting a child via computer to engage in sexual conduct, and that you had pleaded guilty and were sentenced to a four-year prison term.

4. You previously applied to the Naval Discharge Review Board (NDRB) contending that your discharge was unjust because you had never committed a crime. The NDRB decision noted the evidence of record reflected that you had been found guilty by civilian authorities of multiple charges surrounding soliciting a minor to engage in sexual conduct. Your request was considered on 21 November 2021 and was denied.

5. Your NDRB application was subsequently reconsidered, on 22 May 2024, due to the ruling in *Manker v. Del Toro* and was again denied.

In your application to this Board, you express a desire for your discharge character of service be upgraded, to change your reason for separation to reflect a medical discharge, and to change your reentry code to RE-1. You contend that:

1. You were a diligent and capable sailor with a deep respect for the military community.
2. You recognized the seriousness of your civil offenses and pleaded guilty to take accountability.
3. You served your sentence.
4. Your post-discharge character and conduct demonstrate your rehabilitation.
5. You have since been diagnosed by the Department of Veterans Affairs (VA) with depression and adjustment disorder.

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 civil conviction. While the Board carefully considered your contention for mitigation, the Board noted you admitted to committing the misconduct that formed the basis for your administrative separation and OTH discharge. Therefore, the Board determined the presumption of regularity applies to your administrative separation and no error exists with your record.

However, 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 evidence that the Petitioner was diagnosed with an Adjustment Disorder during service. An Adjustment Disorder is a temporary response to a specific, identifiable stressor, typically resolving within six months of the stressor's removal,

while a mental health disorder is a broader term for any condition that significantly affects a person's mood, thinking, or behavior, and may be long-term, more severe, or not directly linked to a single stressor. The Petitioner experienced knee pain in service for which he received physical therapy. Review of records indicates initial knee pain sustained during football in high school, a period of reprieve, then reemergence of symptoms again in service. The Petitioner claims that he used medication to reduce knee pain, which ultimately affected his judgment resulting in misconduct. There is no evidence that he abused pain medications while in service or that he suffered from any primary mental health condition. Furthermore, soliciting sex from a minor is not typical behavior that is caused by a mental health condition or symptoms thereof.

The AO concluded, “Based on the available evidence, 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.”

In response to the AO, you provided additional evidence in support of your application. After reviewing your rebuttal evidence, the AO remained unchanged.

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 insufficient evidence of a diagnosis of mental health condition that may be attributed to military service. This conclusion is supported by the AO. 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 and recognized the same concerns raised in the AO. Specifically, the Board found the nature of your misconduct was not typically caused by a mental health condition or its symptoms. While the Board acknowledged the medical opinion you provided that concluded that a nexus exists, the Board was not persuaded by this evidence without additional medical evidence to explain why your mental health condition affected you so uniquely different from others. 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 making this finding, the Board considered the guidance provided in the Kurta memo that “Premeditated misconduct is not generally excused by mental health conditions...” and that review boards are to exercise caution in assessing the causal relationship between asserted conditions and premeditated misconduct. In reviewing the circumstances of your civilian conviction, the Board determined your misconduct was the exact type that requires caution when determining with a nexus exists with a mental health condition. In the end, the Board found that your premeditated actions during your attempts to solicit a minor to engage in sexual conduct weighed heavily in favor of the AO’s conclusions.

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 desire for a upgrade to your characterization of service and the requested changes to your reason for separation and reentry code, your contentions, the totality of your service, 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 candor and remorse, your service to your community, your mental health issues, the character references you provided for review, 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 your civilian conviction showed a complete disregard for military authority, civilian law, and military regulations. Your conduct was sufficiently serious to negatively affect the good order and discipline of your command and to discredit the Navy. Therefore, even taking into consideration all the mitigation factors in your case, the Board found that your misconduct while on active duty outweighed the mitigation evidence offered. Further, 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 General (Under Honorable Conditions) or Honorable to be warranted in the interests of justice. While the Board commends you for your post-service rehabilitation, 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,

3/23/2026

