



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

█
Docket No. 5203-25
Ref: Signature Date

█
█
█
█
█

Dear Petitioner:

This is in reference to your application for correction of your 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, 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 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, 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). Additionally, the Board also considered the advisory opinion (AO) furnished by a qualified mental health provider and your AO rebuttal.

You applied to this Board for a discharge upgrade and were denied on 4 November 2009. In your initial application, you proffered only traditional Wilkie Memo-based contentions and did not proffer any mental health-related considerations. The summary of your service remains substantially unchanged from that addressed in the Board's previous decision and is as follows:

1. You enlisted in the U.S. Navy and began a period of active duty service on 2 January 1978. Your pre-enlistment physical examination, on 21 October 1977, and self-reported medical history both noted no psychiatric or neurologic issues, symptoms, or counseling.

2. On 3 January 1982, your command documented in your service record that you were being held beyond the normal date of your expiration of enlistment due to pending disciplinary action.

3. Subsequently, you submitted a voluntary written request for an administrative discharge for the good of the service under Other Than Honorable conditions (OTH) to avoid trial by court-martial for certain offenses. As a result of this course of action, you were spared the stigma of a court-martial conviction for misconduct, as well as the potential sentence of confinement and the negative ramifications of receiving an almost certain punitive discharge from a Military Judge.

4. On 19 March 1982, your command issued you a “Page 13” entry where you acknowledged that you were not eligible for reenlistment due to your reenlistment code of “RE-4,” and a “JHJ” separation code,¹ and that an entry to that effect was made in your official service record.

5. Ultimately, on 19 March 1982, you were discharged from the Navy for the good of the service with an under OTH characterization of service, and assigned an RE-4 reentry code.

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 contentions of innocence, error, and coercion, the Board noted you did not provide any evidence, other than your statement, to substantiate these contentions. Therefore, the Board determined the presumption of regularity applies to your request to be separated with an OTH for the good of the service in lieu of a trial by court-martial and no error exists with your administrative separation or record.

However, because you raised the issue of mental health, the Board also requested an AO. A licensed clinical psychologist (Ph.D.) reviewed your contentions and the available records and issued an AO on 4 September 2025. As part of the Board’s review, the Board considered the AO. The AO stated in pertinent part:

There is evidence the Petitioner received diagnoses of mental health concerns during military service. During military service, his mental health concerns were not considered to be sufficiently interfering as to preclude administrative separation for misconduct. Although available records are limited, medical records indicate that the Petitioner had acknowledged drug-related misconduct, which may have contributed to the circumstances of his separation. Unfortunately, there is insufficient information regarding the misconduct, which the Petitioner claims he did not engage in and that his confession was received under duress. While it is possible that mental health concerns could have contributed to a desire to be

¹ The JHJ separation code corresponds to “Unsatisfactory Performance.”

separated from the military at any cost, there is insufficient evidence to make this attribution.

The Ph.D. concluded, “it is my considered clinical opinion that there is in-service evidence of mental health concerns that may be attributed to military service. There is insufficient evidence that his misconduct may be attributed to mental health concerns.”

In response to the AO, you provided additional evidence in support of your application. Following a review of your AO rebuttal submission, the Ph.D. did not change or otherwise modify their original AO.

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 the fact you in-service medical record. 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 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 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, your mental health issues, the circumstances you described surrounding your misconduct, your advanced age, 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 that your conduct showed a complete disregard for military authority and regulations. Further, the Board also noted that the misconduct that led to your request to be discharged in lieu of trial by court-martial was substantial and determined that you already received a large measure of clemency when the convening authority agreed to administratively separate you in lieu of trial by court-martial, thereby sparing you the stigma of a court-martial conviction and possible punitive discharge. Additionally, absent a material error or injustice, the Board declined to summarily upgrade a

discharge solely for the purpose of facilitating veterans' benefits, or enhancing educational or employment opportunities. While the Board considered your age and possible need for benefits to address your health concerns, they determined the severity of your misconduct outweighed any mitigation resulting from those factors. 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 General (Under Honorable Conditions) or Honorable to be warranted in the interests of justice. Based on the same rationale, the Board determined your reason for separation also remains appropriate. While the Board commends you for your post-service accomplishments and acknowledged the personal difficulties you have endured, 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 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,

3/12/2026

