



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

██████████  
Docket No. 6847-25  
Ref: Signature Date

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Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to 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.

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 10 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 an advisory opinion (AO) furnished by 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 their understanding of the issues involved. Therefore, the Board determined that a personal appearance was not necessary and considered your case based on the 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 8 July 1998. After a period of continuous Honorable service, you immediately reenlisted, on 20 May 2002, and commenced another period of active duty.

2. In April 2003, while assigned to the ██████████ homeported in Japan, you were involved in a motorcycle accident. Medical records show that you were seen for abrasions to the leg and face, and pain to the elbow, head, and leg due to the motorcycle accident. You were placed on Sick in Quarters for 24 hours and given head injury precautions.

3. On 6 May 2003, you received nonjudicial punishment (NJP) for violating Uniform Code of Military Justice (UCMJ) Article 92 (three specifications of failure to obey other lawful order); Article 109 (property other than military property of the United States- waste, spoilage, or destruction); Article 11 (drunken or reckless operation of a vehicle, aircraft or vessel); and Article 121 (larceny and wrongful appropriation). You were awarded punishment of reduction in rank (suspended for six months), forfeiture of \$1101 pay per month for two months, and 35 days extra duty and restriction.

4. On 11 April 2005, you were found guilty at special court martial (SPCM) proceedings for violating UCMJ Article 112a (wrongful use, possession, etc. of illegal substances) and Article 134 (wrongfully solicited a Sailor, to commit an aggravated assault upon another Sailor.) The Court sentenced you to confinement for 11 months, forfeiture of \$823 pay per month for 12 months, reduction in rank to E-1, and a Bad Conduct Discharge (BCD).

5. On 23 January 2006, you were discharged with a BCD and assigned a reentry code of RE-4. Certificate of Release or Discharge from Active Duty (DD Form 214) correctly annotates your list of decorations and period of continuous Honorable service from 8 July 1998 to 20 May 2002.

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

The Board initially concluded you were appropriately discharged pursuant to your SPCM conviction and sentence. 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 SPCM conviction and no error exists with your punitive discharge.

Further, the Board found no error with your NJP. The Board noted your claims regarding the command not conducting a line of duty investigation, your assertions about lack of sufficient evidence to support a guilty finding at your Article 15/NJP, and your implication that the timing of the Article 15/NJP was questionable. The Board found that you did not provide sufficient evidence to establish that the command had failed in its administrative processing of allegations of misconduct against you stemming from the motorcycle accident or that it exceeded its authority in taking you to NJP. The Board also found that you did not provide sufficient evidence to overcome the guilty findings at NJP. The Board noted that your available military service record does not indicate that you either requested trial by court martial in lieu of NJP nor is there an indication that you appealed the guilty findings after the conclusion of the NJP. The Board considered the available records, applied the presumption of regularity, and concluded that your NJP was not imposed in error.

Additionally, the Board found no error with your annotated period of continuous Honorable service. As explained above, your record clearly documents that you reenlisted on 20 May 2002

and not 15 March 2004. Therefore, since you did not reenlist again between 20 May 2002 and to your punitive discharge, the Board determined your continuous Honorable service dates are administratively correct.

However, because you raised the issue of TBI, the Board also requested an AO. As part of the Board's review, a qualified medical provider reviewed your contentions and the available records and issued an AO on 12 December 2025. The AO was furnished to the Board and stated in pertinent part:

There is evidence Petitioner was involved in a motorcycle accident in service, however there is no evidence of a documented TBI in any of his medical records.

(Petitioner) did complain of headaches, which is one possible symptom of a TBI, but that alone is not sufficient evidence of a sustained TBI. It is possible that he used substances to cope with pain following his motorcycle accident; however, the nature and severity of his misconduct –including soliciting an assault –is not typical behavior following a TBI.

The AO concluded, “Based on the available evidence, it is my clinical opinion that there is sufficient evidence of a diagnosed TBI that existed in service. There is insufficient evidence to attribute his misconduct to a TBI or any other mental health condition.”

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

The Board applied liberal consideration to your claim that you suffered from TBI, 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 TBI that may be attributed to military service. This conclusion is supported by the AO and the medical records from your service. The Board noted that medical personnel deemed you cleared to return to duty and conducted proper follow-up assessment whereby you had no evidence of a TBI aside from lingering headaches. Therefore, there was insufficient evidence that there was any lingering effects from any TBI. 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 a TBI condition. In this regard, the Board simply had insufficient information available upon which to make such a conclusion. The Board determined the nature and type of your offenses cannot be said to have been caused by TBI. 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 TBI 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, your need for veterans' benefits, your

relative youth and immaturity at the time of your misconduct, the negative effect your discharge has had on your life, your rehabilitation efforts and post-service record of accomplishments, your TBI issues, the harshness of your punishment, the character references you provided for review, your contributions to your community, 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 determined that illegal drug use by a service member is contrary to military core values and policy, renders such members unfit for duty, and poses an unnecessary risk to the safety of their fellow service members. Further, the Board found that your conduct showed a complete disregard for military authority and regulations. The Board observed you were given an opportunity to correct your conduct deficiencies but chose to continue to commit misconduct, which led to your BCD. 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 considered the reckless disregard you showed for others by operating your motorcycle while intoxicated and soliciting a shipmate to assault another Sailor. 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. 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. Based on the same rationale, the Board also determined insufficient evidence of injustice exists to change your period of continuous Honorable service to March 2004, change your narrative reason for separation, changing your current RE code, or removing the NJP from your record.

Accordingly, given the totality of the circumstances, the Board determined 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,

2/27/2026

