



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

[REDACTED]
Docket No. 8917-25
Ref: Signature Date

[REDACTED]
[REDACTED]
[REDACTED]

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 18 May 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. Although you were afforded an opportunity to submit a rebuttal, you chose not to do so.

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:

- You enlisted in the Navy and began a period of active duty on 24 September 1980. After a period of continuous Honorable service that included a previous reenlistment, you immediately reenlisted and commenced your final active duty period on 1 April 1988.
- On 5 July 1988, a psychiatric note in your service health records documented that you had been seen in the emergency room on two occasions with the past three weeks due to

concerns for suicidal ideations stemming from marital discord. At that time, you were diagnosed with Adjustment Disorder with Depressive Mood and Passive-aggressive Personality Disorder.

- On 21 December 1988, you were arrested by civil authorities for suspicion of fifth degree larceny and illegal use of a credit card. On 4 January 1989, you were subsequently convicted by civil authorities and sentenced to six months confinement, which was suspended, with two year's probation, and court-mandated restitution.

- On 22 May 1989, as documented in a psychiatric note, you reported that you felt you were no longer fit for duty because you had become unreliable due to your constant worry about your family. You also mentioned that you had applied for hardship discharge which had been turned down by your command. The examining practitioner also recorded that you had attempted to "fake bad" or exaggerate your complaints and made a strong recommendation that you should be processed for administrative discharge.

- On 1 June 1989, you received nonjudicial punishment (NJP) for violation of Article 113, Uniform Code of Military Justice (UCMJ), due to sleeping on watch.

- Consequently, you were notified of processing for administrative separation by reason of misconduct due to a civilian conviction, and you elected to voluntarily waive your right to a hearing before an administrative separation board. Your discharge under Other Than Honorable (OTH) conditions was approved by Commander, ██████████ and you were so discharged on 19 July 1989.

- You previously applied to the Naval Discharge Review Board (NDRB) contending that your OTH discharge was improper and disproportionate for a single incident of misconduct in 8 years and 10 months of service, including two good conduct awards and high performance marks. Your request was considered on 2 July 1992 and denied.

In your application to this Board, you express a desire for your discharge character of service be upgraded and contend that:

- You received a mental health evaluation at ██████████ during your military service and are currently under the care of the local Department of Veterans Affairs (VA) psychiatrist, who reevaluates your medication every four months.

- You are rated 100% disabled and would like your record corrected to receive proper military burial.

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. The Board noted you admitted to committing the misconduct that formed the basis of your administrative separation and OTH discharge. Therefore, the Board determined the presumption of regularity applies to your OTH discharge and no error exists with your record.

However, because you contend that a mental health condition affected your discharge, the Board also considered the AO. The AO stated in pertinent part:

Petitioner was appropriately referred for psychological evaluation during his enlistment and properly evaluated on two separate occasions. His personality disorder and adjustment disorder diagnoses were based on observed behaviors and performance during his period of service, the information he chose to disclose, and the psychological evaluations performed by the mental health clinicians. A personality disorder diagnosis is pre-existing to military service by definition, and indicates lifelong characterological traits unsuitable for military service, since they are not typically amenable to treatment within the operational requirements of Naval Service. An adjustment disorder typically resolves once the stressor, such as military service, is resolved. Unfortunately, he has provided no medical evidence to support his claims. Dereliction of duty and sleeping on watch could be considered behavioral indicators of symptoms of apathy consistent with his diagnosed characterological traits. However, it is difficult to attribute larceny to a mental health condition. 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, "Based on a review of all available evidence, it is my considered clinical opinion that there is in-service evidence of a mental health condition (adjustment disorder) that may be attributed to military service. There is insufficient evidence that all of 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. However, even applying liberal consideration, the Board found insufficient evidence to conclude all 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 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, the Board also considered the totality of the circumstances to determine whether equitable relief was warranted in the interests of justice in accordance with the Wilkie Memo. In this regard, the Board considered, amongst other factors, your desire for an upgrade to your characterization of service, your contentions, the totality of your service to include service highlights, your need for veterans' benefits, the non-violent nature of your misconduct, your relative youth and immaturity at the time of your

misconduct, your mental health issues, the evidence you provided in support of your application, 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 OTH 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. 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. Finally, 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. Even though the Board considered your need for benefits to address your burial costs, they determined the severity of your misconduct outweighed any mitigation resulting from that factor. While the Board acknowledged the personal difficulties you have endured, ultimately, the Board concluded an upgrade of your discharge characterization of service is not warranted in the interests of justice.

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,

6/10/2026

