



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

██████████
Docket No. 8995-25
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 28 April 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, 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). In addition, the Board considered an advisory opinion (AO) from a qualified mental health professional. Although you were provided an opportunity to respond to the AO, you chose not to do so.

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:

- You enlisted in the U.S. Navy and began a period of active duty on 30 November 2004.

- On 20 May 2009, you received non-judicial punishment (NJP) for six specifications of unauthorized absence (UA).
- On 27 Jul 2009, you signed a performance evaluation in which the promotion recommendation was marked as “significant problems.” Retention was not recommended, and recommendation for retention was withdrawn.
- On 10 August 2009, you received your second NJP for UA, failure to obey an order or regulation and false official statement.
- On 30 August 2009, you signed a performance evaluation in which the promotion recommendation was marked as “significant problems.” Retention was not recommended.
- Unfortunately, documents pertinent to your administrative separation are not in your official military personnel file (OMPF). Notwithstanding, the Board relies on a presumption of regularity to support the official actions of public officers and, in the absence of substantial evidence to the contrary, will presume that they have properly discharged their official duties. Your Certificate of Release or Discharge from Active Duty (DD Form 214) reveals that you were separated from the Navy, on 30 October 2009, with an Other Than Honorable (OTH) characterization of service, narrative reason for separation of “Pattern of Misconduct,” separation code of “HKA,” and reentry code of “RE-4.” Your separation code is consistent with a pattern of misconduct discharge.
- Post-discharge, you applied to the Naval Discharge Review Board (NDRB) for relief. The NDRB denied your request, on 21 May 2013, after determining your discharge was proper as issued.

In your application to this Board, you express a desire for your discharge character of service be upgraded to be eligible for Department of Veteran’s Affairs Benefits and education.

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 did not deny committing the misconduct that formed the basis of your administrative separation and Other than Honorable (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 raised the issue of mental health, the Board also requested an AO. As part of the Board review process, a licensed clinical psychologist (Ph.D.) reviewed your contentions and the available records, and issued an AO on 26 January 2026. The Ph.D. stated in pertinent part:

There is no evidence that he was diagnosed with a mental health condition in military service. However, the Petitioner did have an extended period of

satisfactory service prior to an acute decline in performance resulting in separation. It is possible to consider this change a behavioral indicator of symptoms of undiagnosed irritability and avoidance associated with PTSD. Temporally remote to his military service, the VA has provided mental health treatment for a diagnosis of PTSD attributed to assault during military service. Unfortunately, available records are not sufficiently detailed to establish a clear nexus with his misconduct. 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 Ph.D. concluded, "Based on a review of all available evidence, it is my considered clinical opinion that there is some post-service evidence from VA providers of a diagnosis of PTSD that may be attributed to military service. There is insufficient evidence that his misconduct may be attributed to PTSD."

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 Hagel and Kurta Memos. Applying such liberal consideration, the Board found that there is some post-service evidence from VA providers of a diagnosis of PTSD that may be attributed to military service. This conclusion is supported by the AO and the temporally remote diagnosis you provided. However, even applying liberal consideration, the Board found insufficient evidence to conclude that your misconduct for which you were discharged was excused or mitigated by your PTSD 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 some your misconduct was somehow attributable to any mental health conditions, the Board unequivocally concluded that the severity of that 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 Hagel and Kurta Memos, 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, 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 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 opportunity 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

