



- You enlisted in the Navy and commenced active duty on 26 June 1981.

- In April 1983, you were issued an administrative remarks (Page 13) counseling concerning deficiencies in your performance and/or conduct; specifically, an unauthorized absence from 0707 20 April 1983 to 0200 21 April 1983.
- On 16 March 1985, you advanced to Petty Officer Second Class.
- On 21 June 1985, you were convicted at Special Court Martial (SPCM) of larceny of government property valued greater than \$100 for selling Nuclear, Biological, and Chemical (NBC) protective gear to your landlord. You were sentenced to reduction in rank to E-1, confinement at hard labor, and a Bad Conduct Discharge (BCD). After your release from confinement, you commenced appellate leave on 10 August 1985. Subsequently, the findings and sentence in your SPCM were affirmed and you were issued a BCD on 11 August 1986.
- Post-discharge, you applied to the Naval Discharge Review Board (NDRB) for a discharge upgrade. The NDRB denied your request for an upgrade on 1 April 1996, based on their determination that your discharge was proper as issued. The Board noted that the NDRB decision specifically addressed your contention of misconduct mitigation due to head injury and noted that the military judge considered your injury, as well as your overall good performance in service, prior to sentencing at your SPCM.

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

- You desire to change your discharge characterization of service to receive benefits from the Department of Veterans Affairs (VA).
- You were beaten by five guys with baseball bats when your ship was in dry dock and received a traumatic brain injury (TBI) that impaired your thinking process. So you were not thinking of the outcome of your actions, and that the reason for your delay in requesting this upgrade was because your brain injury had not manifested yet.

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

The Board initially concluded you were appropriately discharged with a BCD based on your SPCM conviction and sentence. The Board noted you did not deny committing the misconduct that formed the basis for your SPCM conviction and sentence. Therefore, the Board determined the presumption of regularity applies to your BCD 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's review process, a qualified mental health professional reviewed your contentions and the available records and issued an AO on 1 February 2026. The AO stated in pertinent part:

Petitioner contends he incurred PTSD, TBI, and other mental health conditions during military service, which may have contributed to the circumstances of his separation from service.

Petitioner submitted the following items in support of his claim:

- 1159 pages of medical records from ■ noting diagnoses of TBI (1984- current), and Depression with anxiety (2012 - current)

- Psychological evaluation (2002) noting diagnoses of PTSD and depression

There is no evidence that the Petitioner was diagnosed with or suffered from a primary mental health condition while in service. Administrative records from his court martial note a head injury in 1983. Unfortunately, it cannot be said that larceny was caused by a head injury (TBI), or any mental health condition. He submitted medical evidence of TBI and “Depression with Anxiety” that are temporally remote to service. His personal statement is not sufficiently detailed to provide a nexus between a mental health condition or TBI and his misconduct.

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

In response to the AO, you provided a personal statement that supplied additional clarification of the circumstances of your case. 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/or TBI, and to the effect that these conditions 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 insufficient evidence of a diagnosis of mental health and/or TBI conditions that may be attributed to military service. This conclusion is supported by the AO and the fact your medical diagnoses were temporally remote to your service. 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 or TBI conditions. In this regard, the Board simply had insufficient information available upon which to make such a conclusion. The Board noted the inconsistency between your contention that you were unaware of the consequences of your actions and your advancement to E-5 approximately three months prior to your SPCM. 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 and TBI conditions, and to the effect that these conditions 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 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 current mental health and TBI issues, the harshness of your punishment, the evidence you provided in support of your application, your advanced age, 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 integrity violation to be sufficiently serious to negatively impact the good order and discipline of your command. The Board also found that your conduct showed a complete disregard for military authority and regulations. 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 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 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. 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 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,

5/21/2026

