



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
701 S. COURTHOUSE RD
ARLINGTON, VA 2220

Docket No. 9239-25
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 you did not file your application in a timely manner, the statute of limitation was waived in accordance with. A three-member panel of the Board, sitting in executive session, considered your application on 16 March 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). The Board also considered the advisory opinion (AO) furnished by a qualified mental health professional on 29 January 2026. Although you were afforded an opportunity to submit an AO rebuttal, you chose not to do so.

Regarding your request for a personal appearance, the Board determined that a personal appearance with or without counsel will not materially add to their understanding of the issue(s) 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 6 August 1998. As part of your enlistment processing, you admitted preservice use of marijuana.

2. On 23 March 1999, you were convicted by civil authorities and charged with reckless driving. You were sentenced to a period of confinement, court cost fine, and driving privileges revoked.

3. Between 3 June 1999 and 22 June 2001, you received nonjudicial punishment (NJP) on seven occasions for eleven periods of unauthorized absence (UA), dereliction of duty, missing ship's movement, and disobeying a lawful order. After your fifth NJP, you were counseled concerning your conduct and advised that failure to take corrective action could result in administrative separation. Subsequent to your counseling, you received two additional NJPs.

4. Consequently, you were notified of the initiation of administrative separation proceedings by reason of misconduct due to pattern of misconduct and misconduct due to commission of a serious offense. Subsequently, you decided to waive your procedural rights.

5. In the meantime, on 27 July 2001 and 1 August 2001, you received NJP for two additional periods of UA. On 29 July 2001, your commanding officer recommended you be discharged with an Other Than Honorable (OTH) discharge characterization of service. The separation authority approved the recommendation on the basis of misconduct due to pattern of misconduct and you were so discharged On 7 September 2001.

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

1. Prior to receiving UMCJ action, you were not provided formal counseling in regards to your performance or conduct. Such counseling would have provided you the opportunity to correct your deficiencies, receive guidance, and demonstrate improvement.

2. You were never medically evaluated for mental health issues.

3. Your administrative separation and assigned characterization of service was the result of serious procedural omissions and a lack of consideration for your mental and personal circumstances at the time.

4. You were experiencing back pain since 2000. This condition was so painful that you were unable to get out of bed, perform your duties, or concentrate. Your condition has worsened over the years and has led to medical care and employment issues. Your pain also contributes to your mental health issues.

5. You currently receive treatment for your mental health issues and take medication. However, your symptoms limit your ability to provide for yourself.

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 OTH discharge. While you raised due process violations regarding the lack of counseling, the Board found these unsupported by the record. As previously discussed, you were counseled regarding your conduct deficiencies after your fifth NJP. While this counseling may have been overdue, your command did not process you for administrative separation until you were subject to two additional NJPs. The Board noted that you continued commit misconduct even after being notified of administrative separation processing and were subject to two more NJPs before you were eventually discharged. Therefore, the Board determined the presumption of regularity applies to your administrative separation 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, the Board considered the AO. The AO stated in pertinent part:

There is no evidence that the Petitioner was diagnosed with or suffered from any mental health condition (PTSD) in service. He received seven NJP's and one civilian conviction which exceeds that of what would be expected to be caused by a mental health condition alone. He submitted evidence of diagnoses of depression and Generalized Anxiety Disorder that are temporally remote to service. Furthermore, the evidence submitted does not suggest a nexus between his post-service diagnoses and in-service misconduct. Additional records (e.g., active-duty medical records, post-service mental health records describing the Petitioner's diagnosis, symptoms, and their specific link to his separation) may aid in rendering an alternate opinion.

The AO concluded, "Based on the available evidence, it is my clinical opinion that there is insufficient evidence of a mental health (PTSD) that existed in service. There is insufficient evidence to attribute his misconduct to PTSD or any other 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 Hagel and Kurta Memos. Applying such liberal consideration, the Board found insufficient 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 your medical evidence is 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 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 Hagel and 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 desire for an upgrade to your characterization of service, 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 evidence you provided in support of your application, 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. Contrary to your contention, 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. Further, 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 possible need for benefits to address your health concerns, they determined the severity of your misconduct outweighed any mitigation resulting from that factor. 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.

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 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,

3/31/2026

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Executive Director

Signed by: ■