



**DEPARTMENT OF THE NAVY**  
BOARD FOR CORRECTION OF NAVAL RECORDS  
701 S. COURTHOUSE ROAD, SUITE 1001  
ARLINGTON, VA 22204-2490

█  
Docket No: 7404-20  
Ref: Signature Date



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 you did not file your application in a timely manner, the statute of limitation was waived in accordance with the 25 August 2017 guidance from the Office of the Under Secretary of Defense for Personnel and Readiness (Kurta Memo). A three-member panel of the Board, sitting in executive session, considered your application on 25 June 2021. 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 Kurta Memo, the 3 September 2014 guidance from the Secretary of Defense regarding discharge upgrade requests by Veterans claiming post-traumatic stress disorder (PTSD) (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 an advisory opinion (AO) from a qualified mental health professional dated 30 April 2021, which was previously provided to you.

You enlisted in the Navy on 2 July 1981. On 5 October 1981, you received nonjudicial punishment (NJP) for larceny. On 27 August 1983, you received a second NJP for a two-day unauthorized absence (UA) and sleeping on post. On 29 September 1983, you received a third NJP for disobeying a lawful order. On 17 May 1984, you received a fourth NJP for an UA from your appointed place of duty, a three-day UA, and failure to obey a lawful order. On 14 March 1985, you received a fifth NJP for wrongful use of marijuana. On 21 March 1985, your record indicates you were convicted by summary court-martial (SCM) but the SCM documentation in your record is incomplete. Subsequently, although your record does not contain the

administrative separation notification document, the record reflects you were notified of pending administrative separation action by reason of misconduct due to pattern of misconduct and drug abuse. After you waived your procedural rights, your Commanding Officer recommended you be discharged with an other than honorable (OTH) characterization of service due to pattern of misconduct and drug abuse. The discharge authority approved this recommendation and directed discharge with an OTH characterization of service by reason of misconduct. On 5 April 1985, you were discharged.

As part of the Board's review, a qualified mental health professional reviewed your request and provided the Board with an AO on 30 April 2021. Based on the available evidence, the AO stated there is insufficient evidence you exhibited behaviors associated with victims of military sexual trauma, incurred a mental health condition as a result of your military service, or that your in-service misconduct could be attributed to a mental health condition. The AO was provided to you on 4 May 2021, and you were given 30 days to respond. When you did not respond within the 30 days, the case was submitted to the Board for review.

The Board carefully reviewed your application, weighed all potentially mitigating factors, and considered your contention that the constant sexual and verbal harassment you received from your supervisor "took its toll on [your] mental stability." Specifically, you contend your supervisor repeatedly expressed his dislike for you, threatened you, and stated he "hated" everything you represented and was going to "punish" you. Further, the Board considered your contention the supervisor constantly made fun of you because of the surgical scar from your corrected cleft palate. However, the Board, applying liberal consideration, relying on the AO, and noting you did not submit any documentation regarding your mental health condition or your post-service record, did not find evidence of an error or injustice that warrants upgrading your characterization of service or granting clemency in the form of an upgraded characterization of service.

The Board carefully considered all potentially mitigating factors to determine whether the interests of justice warrant relief in your case in accordance with the Wilkie Memo. These included, but were not limited to, your desire to upgrade your discharge and your contentions addressed above. Based upon this review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined your repeated misconduct outweighed these mitigating factors. 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, \_\_\_\_\_  
7/7/2021

[REDACTED]

Executive Director

Signed by: [REDACTED]