



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

██████████  
Docket No: 2745-21

Ref: Signature Date

████████████████████  
████████████  
████████████████

Dear ██████████

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 the entire record, the Board for Correction of Naval Records (Board) found the evidence submitted was 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 27 September 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). Additionally, the Board considered a 12 July 2021 advisory opinion (AO) furnished by a qualified mental health provider, a copy of which was provided to you and to which you did not respond.

You enlisted in the Marine Corps and commenced a period of active duty on 6 June 1989. On 19 October 1990, you received nonjudicial punishment for disobeying an order by having liquor in your room. From 12 January 1991 to 21 March 1991, you participated in Operations Desert Shield and Desert Storm. On 21 July 1992, you received a formal written morning concerning your exercise of poor judgment. On 17 February 1993, you were convicted by a general court-martial for striking your wife and pointing a knife at her, causing her to cut herself, and for communicating a threat to your wife. As part of your sentence, you were awarded a bad conduct

discharge. On 4 December 1995, your case completed appellate review and your bad conduct discharge was approved, and on 11 December 1995, you were so discharged.

The Board carefully considered all potentially mitigating factors in your petition to determine whether the interests of justice warrant relief in your case including in accordance with the Wilkie Memo. You contend in your petition that you were discharged for a domestic issue, and you do not feel that your mental health or medical conditions were taken into consideration when recommending your discharge. You attached medical records to your petition in support of your contentions.

In connection with your assertion that you suffered from mental health condition, the Board requested, and reviewed, the AO. The AO reviewed your service record as well as your petition and the matters that you submitted. According to the AO:

Petitioner's in-service records did not contain evidence of a diagnosis of a mental health condition. Throughout his court-martial, there were no concerns noted which would have warranted referral to mental health resources (i.e., no request for a mental health evaluation). Petitioner provided documentation of a psychological evaluation approximately one month prior to his misconduct resulting in a court-martial and discharge from service. The evaluation determined Petitioner did not suffer from symptoms of a mental health disorder, specifically depression or PTSD. Although Petitioner contended he was discharged due to a domestic issue and his mental health and medical conditions were not taken into consideration, he provided documentation, contemporary to his service, no evidence existed he met the diagnosis for a mental health condition.

The AO concluded, "it is my considered medical opinion the preponderance of available objective evidence failed to establish Petitioner was diagnosed with a mental health condition, suffered from a mental health condition at the time of his military service, or his in-service misconduct could be mitigated by a mental health condition."

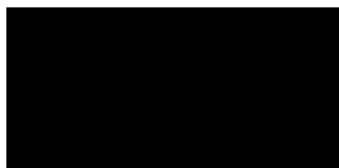
Based upon its review, the Board concluded the potentially mitigating factors that you raised were insufficient to warrant relief. With respect to your contention relating to a mental health condition, the Board concurred with the findings of the AO. Concerning your assertion that your discharge related to a domestic issue, the Board noted that you were convicted of serious offenses at your general court-martial, and that your case was processed through the appropriate levels of review prior to the approval of your bad conduct discharge. Given the totality of the circumstances, and in light of your conviction by a general court-martial, 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,

10/7/2021



Executive Director

Signed by: 