

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

> Docket No: 2914-21 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 limitations 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 6 October 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 13 August 2021, which was previously provided to you.

You enlisted in the Marine Corps and began a period of active duty on 6 September 1988. On 4 August 1989, you were issued an administrative remarks (Page 11) counseling concerning your uttering worthless checks totaling \$2,045.00. On 24 September 1991, you were convicted by special court-martial (SPCM) of an unauthorized absence totaling three days and 28 specifications of making, drawing or uttering checks. You were awarded as punishment confinement, forfeiture of pay, reduction in rank, and a bad conduct discharge (BCD). On 26 March 1992, after review of your case, the Naval Clemency and Parole Board directed that your BCD be remitted to a general (under honorable conditions) characterization of service discharge. On 30 September 1992, pursuant to the Uniform Code of Military Justice, Article 71, the Convening Authority directed your discharge with a general (under honorable conditions) characterization of service.

As part of the Board's review, a qualified mental health professional reviewed your request and provided the Board with an AO on 13 August 2021. The AO noted that your in-service records did not contain evidence of a diagnosis of a mental health condition or symptoms/behavioral changes indicative of a diagnosable unfitting mental health condition. The evidence you presented did not establish a timeline of onset and development of mental health symptoms or identify a nexus with your in-service misconduct. The AO concluded by opining that the preponderance of objective evidence failed to establish you suffered from a mental health condition at the time of your military service or your in-service misconduct could be mitigated by a mental health condition.

The Board carefully reviewed your application, weighed all potentially mitigating factors, and considered your contention that in December of 2019 you were diagnosed with PTSD related to your combat experienced in the Gulf War, and as part of your ongoing therapy, it has been determined that your excessive alcohol consumption and lack of financial discipline were the result of PTSD. After careful consideration of the AO, your submission of supporting documentation from the Department of Veterans Affairs (VA), and applying liberal consideration, the Board did not find 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 contention as previously discussed, your desire to upgrade your discharge character of service and upgrade your rank to Lance Corporal. Based upon this review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your SPCM conviction, outweighed these mitigating factors. About your contention, be advised decisions reached by the Department of Veterans Affairs (VA) to determine if former servicemembers rate certain VA benefits do not affect previous discharge decisions made by the Marine Corps. The criteria used by the VA in determining whether a former servicemember is eligible for benefits are different from that used by the Marine Corps when determining a member's discharge characterization of service. Accordingly, given the totality of the circumstances, the Board determined 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,

