

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

> Docket No: 3174-21 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 11 August 2021, which was previously provided to you.

You enlisted in the Navy and began a period of active duty on 16 May 1977. On 26 September 1978, you received non-judicial punishment (NJP) for Violation of the Uniform Code of Military Justice (UCMJ), Articles 86, 89, and 92; the specifics of your charges were not available. Additionally, during the period from 29 October 1978 to 26 January 1980, you received four more instances of NJP. Your offenses were absence from your appointed place of duty, failure to obey an order, conspiracy to commit larceny, larceny of government property, disrespect in language on two occasions, disrespect toward a noncommissioned officer, disrespect toward a commissioned officer, failure to obey a lawful order, assault and communicating a threat.

On 20 February 1980, you were notified that you were being recommended for administrative discharge from the Navy. You were advised of, and waived, your procedural rights, including your right to consult with and be represented by military counsel, and your right to present your case to an administrative discharge board (ADB). Your commanding officer (CO) then forwarded your administrative separation package to the separation authority (SA) recommending administrative discharge from the Navy with an other than honorable (OTH) characterization of service. The SA approved the CO's recommendation for administrative discharge, and directed that your characterization of service be type warranted by your service record. The SA also direct your narrative reason for separation as convenience of the government. On 28 March 1980, you were discharged 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 11 August 2021. The AO noted that your in-service records did not contain evidence of a diagnosis of a mental health condition or psychological/behavioral changes, which may have indicated a mental health condition. Although you provided evidence of post discharge diagnosis of PTSD, you did not provide any description of your purported trauma, symptoms that would meet the criteria for PTSD, how those symptoms interfered with your ability to function, or were related to your in-service misconduct. The AO concluded by opining that the preponderance of objective evidence failed to establish you suffered from PTSD at the time of your military service, or your in-service misconduct could be attributed to PTSD or other mental health conditions.

The Board carefully reviewed your application, weighed all potentially mitigating factors, and considered your contention that your discharge should be upgraded due to the fact that you suffered from PTSD while in the service. After careful consideration of the AO, your submission of supporting documentation, 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 contentions' as previously discussed and your desire to upgrade your discharge character of service. Based upon this review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined your misconduct as evidenced by five NJPs, outweighed these mitigating factors. 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,

10/22/2021 Executive Director