



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

Docket No: 3198-21  
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 13 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 17 August 2021, which was previously provided to you.

You enlisted in the Navy and began a period of active duty on 17 November 1992. On 22 January 1994, you received non-judicial punishment (NJP) for drinking alcoholic beverages while under 21 years of age. On 28 March 1994, you received your second NJP for an unauthorized absence totaling 23 days and missing ship's movement. On 5 April 1994, 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 and directed your OTH discharge from the Navy by reason of misconduct due to commission of a serious offense. On 13 May 1994, you were so discharged.

As part of the Board's review, a qualified mental health professional reviewed your request and provided the Board with an AO on 17 August 2021. The AO noted that you did not provide clarifying information about your purported depression or PTSD, and that while your in-service record reflects poor coping skills, but it does not appear to reflect evidence, which would meet the criteria of a mental health condition. 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 while you were in boot camp, your aunt who raised your mother passed away, your command would not let you attend the funeral, which led to your depression and caused you to drink. You further state that you are still dealing with the regret of not being able to attend the funeral. After careful consideration of the AO 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, and your desire to upgrade your discharge character of service. The Board noted you did not submit any documentation or advocacy letters in support of your application to be considered for clemency consideration. 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 two 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, \_\_\_\_\_

10/27/2021

Executive Director