



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

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Docket No: 3306-21  
Ref: Signature Date



Dear Petitioner:

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.

A three-member panel of the Board, sitting in executive session, considered your application on 4 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 the 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). In addition, the Board considered the advisory opinion (AO) furnished by a qualified mental health professional dated 26 August 2021, which was previously provided to you, and documents submitted with your rebuttal.

On 2 October 1981, you reenlisted in the Navy after serving over four years of honorable service. On 20 January 1986, you received nonjudicial punishment (NJP) for concealing a dangerous weapon and two specifications of assault. Additionally, you were counseled and warned that further misconduct could result in administrative discharge action. On 13 February 1986, you were referred to a Drug and Alcohol Counselor for screening and evaluation. The evaluation determined the extent of your past substance involvement did not warrant transfer to a treatment facility, and your drinking pattern was indicative of a psychological dependence on alcohol. It was recommended that you be placed on a supervised Antabuse program, attend 2 Alcoholics Anonymous (AA) meetings weekly and receive command level counseling on a regular basis. It was further recommended that if any other alcohol related incidents occurred, you be

administratively separated from the Navy. On 23 February 1986, a Drug and Alcohol report stated that you were considered to have fair potential for further service. On 28 March 1986, you received NJP for five specifications of failing to obey an order by missing ordered Antabuse. On 15 April 1986, you were notified of administrative discharge action by reason of misconduct due to commission of a serious offense, and Alcohol Abuse Rehabilitation failure. After being advised of your procedural rights, you elected to waive your right to have your case heard before an administrative discharge board. On 17 April 1986, your case was forwarded to the separation authority with the recommendation that you receive a general discharge. On 24 April 1986, the separation authority directed that you receive an other than honorable (OTH) discharge due to commission of a serious offense, and to offer you in-patient treatment via a Department of Veterans Affairs (DVA) hospital prior to your discharge. At that time, you elected not to receive 30-day in-patient treatment via the DVA. On 20 May 1986, you were discharged from the Navy with an OTH characterization of service.

A qualified mental health professional reviewed your request for correction to your record and provided the Board with an AO regarding your assertion that you were suffering from Post-Traumatic Stress Disorder (PTSD) during your service. The AO noted that based on the available evidence, the preponderance of objective evidence failed to establish that you suffered from PTSD or other mental health condition at the time of your military service, or that your in-service misconduct could be attributed to PTSD or other unfitting mental health condition. In rebuttal to the AO, you provided additional documents by your doctors. On 16 September 2021, in response to your rebuttal, an updated AO stated that your rebuttal submission of pages 3-9 of the 8/2/19 VA PTSD C&P Exam (previously submitted pages 1-2) which diagnosed you with PTSD from a 1980 car accident you described as "horrendous" and being "thrown from a car window." The examiner noted you were intoxicated and racing home to get a weapon to avenge being assaulted in a bar. Though the examiner cited numerous symptoms comprising a diagnosis of PTSD, it was more reflective of your level of psychological impairment contemporary to the evaluation date, and did not document in-service manifestations of PTSD, or relationship to your alcohol related events in service, or relationship to your misconduct while enlisted. The Examiner noted your current assessed condition was not influenced by alcohol abuse, as you were incarcerated "serving a life sentence for aggravated sexual abuse of a child." As the additional evidence provided in rebuttal to the 8/26/2021 advisory opinion did not provide additional evidence in support of your contention of undiagnosed PTSD at the time of your misconduct, the original AO remains unchanged.

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 assertions that you have PTSD due to a service-connected illness and alcoholism. 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 two NJPs, counselling's, and the fact that you were warned of the consequences of further misconduct outweighed these mitigating factors. Additionally, the Board concurred with the AO's finding that based on the available evidence, the preponderance of objective evidence failed to establish you suffered from PTSD or other unfitting mental health

condition at the time of your military service, or your in-service misconduct could be attributed to PTSD or other unfitting mental health condition. 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,

10/18/2021

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Executive Director  
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