

DEPARTMENT OF THE NAVY

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

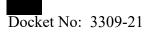
> Docket No: 3309-21 Ref: Signature Date

Dear

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 the circumstances of your case are such that favorable action cannot be taken, please note whether or not an individual is entitled to veterans' benefits is a matter under the cognizance of the U.S. Department of Veterans Affairs (VA) and you may contact the nearest office of the VA concerning your right to apply for benefits. If benefits have been denied, you may be able to appeal the denial under procedures established by the VA.

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 22 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 the advisory opinion (AO) furnished by a qualified mental health provider which was previously provided to you. Although you were afforded an opportunity to submit a rebuttal, you did not do so.

You enlisted and began a period of active duty in the Marine Corps on 6 December 1994. On 11 May 1995 you received nonjudicial punishment (NJP) for a two day unauthorized absence (UA), terminated by surrender, in violation of Article 86, Uniform Code of Military Justice (UCMJ). Your second NJP occurred on 31 August 1995 for a 58 day period of UA, also terminated by surrender, in violation of Article 86, UCMJ. On 18 September 1995 you received a psychiatric

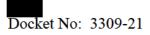


evaluation after being referred for mental health evaluation due to family stressors, and diagnosed with adjustment disorder, resolved. The evaluation further noted you were found fit for full duty and responsible for your actions. On 2 May 1997 you sustained a head injury when a stake driver bounced off a pole and hit you in the head. You were diagnosed with closed head injury without concussion and treated for a laceration. There was no indication in your record of any neurological or psychological sequelae to your head injury. On 28 August 1997 you were convicted by summary court martial (SCM) of a 5 day period of UA and wrongful marijuana use in violation of Articles 86 and 112a, UCMJ. On 5 September 1997 you refused substance abuse evaluation. On 28 October 1997 you were notified of administrative separation processing by reason of drug abuse as evidenced by your SCM. You waived your procedural rights and were discharged on 11 December 1997 with an other than honorable characterization of service.

You contend you were dealing with many unfortunate incidences as a young individual that you did not know how to handle at the time. You further contend you believe that traumatic incidents and military injuries contributed to your unfortunate choices. You state you are a productive and law abiding man and have not been in any unlawful incidence since your service. You further state you seek VA healthcare due to health issues associated with your military career.

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 noted above and desire to upgrade your discharge. The Board also relied on the AO in making its determination. The AO noted that your mental health presentations were consistently related to events that occurred prior to your enlistment, or to family concerns during your enlistment. Consequently, the AO concluded that the preponderance of objective evidence failed to establish you suffered from an unfitting mental health condition at the time of your military service, or that your in-service misconduct could be attributed to an unfitting mental health condition. Additionally, in its deliberations, the Board noted that you did not provide any documentation in support of your post-service accomplishments, or clemency request. Based upon this review, the Board concluded that the potentially mitigating factors in your case were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your two NJPs and SCM, outweighed these mitigating factors. 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.

