



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: 3574-21
Ref: Signature Date

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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 you did not file your application in a timely manner, the statute of limitation 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 12 November 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 to 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 in the Naval Reserve on 27 October 1993, and began a period of active duty on 8 February 1994. You deployed to the Western Pacific aboard the USS █) and received overall performance marks of 3.6. However, you received nonjudicial punishment (NJP) on 20 June 1995 for a false or unauthorized pass and unauthorized absence. You received NJP a second time on 6 July 1995 for another unauthorized absence as well as failure to obey a lawful order. Your command counseled you for these deficiencies and warned you of the potential consequences of administrative separation if you continued to commit misconduct. Without regard to that warning, you further escalated your misconduct with an extended 15-day period of

unauthorized absence. Following your return from this absence, you were notified that you were being processed for administrative separation for a pattern of misconduct and were advised of your procedural and administrative rights. You waived your right to consult with counsel, waived your right to an administrative discharge board, and waived your right to submit a statement on your behalf. Although your command observed no need for a psychiatric or medical evaluation incident to your recommendation for administrative separation, you did receive a separation physical. You did not raise a concern for your mental health or request an evaluation at any time prior to or during your physical; in fact, you stated that you were in good health and specifically denied any complaint of depression or excessive worry on your final physical. The separation authority directed discharge with an other than honorable character of service by reason of pattern of misconduct, and you were discharged on 13 February 1996.

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 desire to upgrade your discharge and your contentions that you performed well and there were never complaints about your shipboard duties, that you suffered stress after returning from deployment but never received an evaluation for that condition, and that your discharge was unjustly harsh in proportion to your misconduct as well as unfair without a proper evaluation of your mental state. In reviewing your contention of suffering post-deployment stress, the Board considered the AO in making its determination. The AO noted that your in-service records contain no evidence of a mental health diagnosis or condition and that neither you nor your command raised concerns for your mental health during disciplinary actions, counseling, or administrative processing prior to your discharge. The AO observed that you denied any complaint of excessive worry or stress during your separation physical and, although you do claim a mental health condition, you did not describe any in-service traumatic stressors or symptoms which might meet the criteria for a mental health condition. In its deliberations, the Board concurred with the AO's assessment that your records contained insufficient evidence to establish that you suffered from a mental health condition at the time of your military service or that your in-service misconduct could be mitigated by such condition. Based upon this review, the Board concluded that the potentially mitigating factors you contend were insufficient to warrant relief. Specifically, the Board determined that your repeated misconduct, as evidenced by nonjudicial punishments for unauthorized pass, orders violations, and multiple unauthorized absences, which continued with increasing severity even after you received corrective counseling warnings, outweighed the mitigating evidence you presented. 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 the 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,

11/30/2021

[REDACTED]

Executive Director

Signed by: [REDACTED]