



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

██████████
Docket No: 3616-21
Ref: Signature Date

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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 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 Board waived the statute of limitations 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 17 December 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.

Your enlistment records indicate that, prior to enlisting, you spent a night in county jail on 26 May 1992 at your "mother's request" because of an incident of fighting. You enlisted in the Navy and began a period of active service on 7 July 1993. You were subject of a civil conviction on 19 May 1994 for obstruction of justice, resisting arrest, and assault consummated by battery, for which your command issued retention counseling and warnings.

On 17 March 1995, you received nonjudicial punishment (NJP) for a violation of Article 90 for disobeying a superior commissioned officer; although you were awarded reduction as punishment, your commanding officer (CO) suspended your punishment. You married your now-former spouse on 18 October 1995 and received a second NJP on 12 December for Article 128, for assault consummated by battery against your spouse, and for Article 90, for disobeying your superior commissioned officer's order to cease abusing your spouse. You again received a suspended reduction as punishment; however, this suspension was vacated on 16 January 1996, when you were again issued retention counseling and warnings for recurring spouse abuse. You received a third NJP on 26 January 1996 for additional Article 128 assault consummated by battery against your spouse and for Article 91 for disobeying a superior petty officer. You were notified of administrative separation processing for pattern of misconduct on 20 February 1996; and you waived your right to consult with counsel and to have your case heard before an administrative board. Your separation was approved on 4 March 1996 and, after returning off a period of unauthorized absence from 9 – 13 March 1996, you were discharged on 26 March 1996 with an other than honorable (OTH) characterization of service.

The Board carefully weighed all potentially mitigating factors, such as your desire to upgrade your characterization of service, your assertion that you were not well instructed prior to discharge, your 4.0 trait average, your contention that your youth and immaturity led you to believe you could control your alcohol abuse problem, rather than seek help, and your former spouse's attestation that better understanding and recognition of your stressors and alcohol problem, along with counseling and assistance, would have resulted in a different outcome.

The Board considered the AO, which noted that there are no in-service or post-service clinical records indicative of any mental health condition, and the Board concurred with the opinion of the AO that the evidence failed to establish that you suffered from an unfitting mental health condition at the time of your military service. The Board also observed your ongoing pattern of violent conduct as evidenced by your pre-service fighting, your civil conviction for assault consummated by battery, and two of your three NJPs involving assault consummated by battery. In this regard, the Board carefully weighed the statements of your CO in support of his recommendation for your administrative discharge against the matters you submitted in rebuttal to the AO and the contentions of your former spouse. Your CO expressly stated that, although you were an excellent performer, you had a serious problem with violence and insubordination; more importantly however, your CO specified that, "after many attempts at counseling, assistance, and rehabilitation within the chain of command and outside resources," you had still failed to correct your behavioral problems and continued to commit serious misconduct with such regularity that it rendered you unfit for further service.

Based upon this review, the Board concluded the potentially mitigating factors you submitted were insufficient to warrant relief. Specifically, the Board determined that your misconduct 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 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 is attached 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,

1/11/2022

[REDACTED]

Executive Director

[REDACTED]