



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: 3847-21
Ref: Signature Date

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Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to 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 8 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 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, 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). Additionally, the Board considered the advisory opinion (AO) furnished by qualified mental health provider dated 2 September 2021, 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 U. S. Navy Reserve (USNR) and began a period of active duty on 23 November 1979. On 18 July 1980, you received your first nonjudicial punishment (NJP) for unauthorized absence (UA), two specifications of disobeying a lawful order, and for wrongfully using provoking words. On 17 September 1980, you received a second NJP for again being in a UA status, two specifications of disobeying a lawful order, and for being disrespectful in language. On this date you also received a counseling warning regarding your frequent involvement with military authorities. The counseling advised that failure to overcome your

deficiencies would cause you to subject yourself to be processed for administrative discharge which may be under conditions other than honorable (OTH). On 30 May 1981, you received another NJP for two specifications of UA, the first totaling 19 days and the second 26 days until you surrendered, as well as two specifications of missing ship's movement. This NJP was followed by a fourth on 24 November 1981, for failing to go to your appointed place of duty and failing to obey a lawful order. A few days later, on 28 November 1981, you received a fifth NJP for failing to go to your appointed place of duty and for willfully failing to obey a lawful order. As a result of your continued misconduct, on 11 February 1982, you were found guilty at a Special Court-Martial (SPCM) of five specifications of UA totaling 55 days until you either surrendered or were apprehended. At the SPCM you were sentenced to be confined at hard labor for 90 days and to forfeit \$200.00 pay per month for three months. On 26 March 1982, you were subsequently notified of your pending administrative separation due to your frequent involvement of a discreditable nature with military authorities, at which time, you waived your right to consult with counsel and to an administrative discharge board. Further, you were notified of the commanding officer's (CO) intent to recommend to the separation authority that you be discharged with an OTH characterization of service. On 24 May 1982, you requested an early return to the civilian community. Your request was approved on 27 May 1982, and you were discharged with an OTH.

On 18 October 1983, your case was heard at the Naval Discharge Review Board (NDRB). At this hearing you requested your discharge be upgraded to a general characterization of service in hopes of obtaining a better job or joining the U.S. Army. Further, you contended your discharge was unjust because you did your best although you did not get along with your division officer and a few of your co-workers. NDRB found no impropriety or inequity regarding your discharge and granted no relief.

As part of the Board's review, a qualified mental health professional reviewed your request for correction to your record and provided the Board with an AO regarding your assertions that: (1) your discharge is related to undiagnosed and undocumented PTSD you experienced prior to entering the service; (2) your condition worsened during your service, which explains why you had problems understanding authority; (3) you suffered from trauma created from violence, drugs, and police brutality that plagued your community; and (4) your PTSD was exacerbated by a "Dear John" letter you received from your mother while she was in prison for a murder she committed in your home. The AO noted: (1) your in-service record revealed an enlistment physical examination in which you denied a history of pre-enlistment mental health or substance abuse issues; (2) the remainder of your in-service records did not contain evidence of a diagnosis of a mental health condition or psychological/behavioral changes which may have indicated a mental health condition; and (3) throughout your disciplinary actions, counselings, and administrative processing, there were no concerns cited which would have warranted referral to mental health resources. The AO opined the preponderance of available 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.

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 noted above. The Board noted, aside from your statement, you did not submit character letters or post-service documents to be considered for clemency purposes. Additionally, characterization of service is based in part on conduct marks assigned on a periodic basis. Your overall performance trait average was 2.0 with a military behavior/conduct trait of 2.6. At the time of your service, an overall performance trait average of 2.8 with an average of 3.0 in military behavior/conduct was required to be considered for an honorable characterization of service. 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 your NJPs, outweighed these mitigating factors. The Board also concurred with the AO. 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,

11/29/2021

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Executive Director
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