



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: 3870-21
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 your application was not filed in a timely manner, the Board found it in the interest of justice to waive the statute of limitations and consider your application on its merits. A three-member panel of the Board for Correction of Naval Records, 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 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), and the relevant Advisory Opinion.

You enlisted in the Navy and began a period of active duty on 16 October 1996. On 15 June 1997, you received nonjudicial punishment (NJP) for being absent without authorization (UA) from your appointed place of duty. On 12 March 1998, you received a second NJP for a period of UA, a false unauthorized pass, and indecent assault. Your Awards Record reflects a third NJP on 21 April 1998, but no amplifying information is available. You were discharged from the

Navy on 5 June 1998, on the basis of a Pattern of Misconduct, and received an other than honorable discharge and a reentry (RE) code of RE-4.

In your application for correction, you ask for an upgrade to your other than honorable discharge to a general discharge. You state that you believe that the hardship you faced while on active duty, coupled with the indifference of members of your chain of command, negatively impacted your performance, morale and mental health. On your DD Form 149, you check boxes for “PTSD” and “Other Mental Health” as issues which relate to your request. You also provide a personal statement in which you state that: (a) you were an undesignated seaman who was focused and eager to learn; (b) you were married to a fellow servicemember who was stationed in Florida; (c) you submitted a co-location request but the strain on your marriage due to distance impacted your conduct which subsequently led to discharge; (d) since your separation from the Navy, you have been working with a temp agency on numerous assignments; and (e) your family has undergone a series of tough circumstances --- specifically, that you recently you had a stroke, you have had tumors removed from your brain, your son is autistic; and you have a newborn on the way.

As part of the review process, a Licensed Clinical Psychologist reviewed your request and issued an Advisory Opinion dated 8 October 2021. The Advisory Opinion considered your contention that PTSD and other mental health concerns pertain to your application. The Advisory Opinion noted that your military record does not contain diagnosed mental health conditions, symptoms or behaviors indicative of a mental health condition. In consideration of the information in your record and the lack of medical or treatment information provided with your application, the Advisory Opinion concluded that the preponderance of objective evidence failed 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 attributed to an unfitting mental health condition. The Advisory Opinion was provided to you, and you were given 30 days in which to submit a response. When you did not provide a response within the 30-day timeframe, your case was submitted to the Board for consideration.

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 contention that you were suffering from a mental health condition that mitigated your in-service misconduct. The Board also considered your current personal struggles, and the strain of being geographically separated from your spouse during your enlistment. The Board reviewed the analysis and conclusions of the Advisory Opinion and substantively concurred with its determination that the preponderance of objective evidence does not support a finding that you suffered from a mental health condition while you were in the Navy that mitigates your misconduct. Should you wish to submit post-discharge or in-service treatment records, the Board noted that such information may be helpful in assessing your contention of suffering from a mental health condition. Even in consideration of matters of clemency to include your current situation and the struggles you faced while you were enlisted, the Board found that the NJPs reflected in your record support your receipt of an other than honorable discharge, and that an upgrade is not warranted.

