



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: 3949-21
Ref: Signature Date



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 3 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.

You enlisted in the Navy and began a period of active duty on 4 June 1982. During initial recruit training, on 5 August 1982, you received nonjudicial punishment (NJP) for larceny, theft of \$87 from a fellow recruit. Less than 3 weeks later, on 26 August 1982, you received a second NJP for being drunk and disorderly as well as an orders violation for drinking in a prohibited location. You were counseled regarding retention in the Navy on 14 July 1983 following a third NJP, this time for assault consummated by batter and for communicating a threat. You were again counseled regarding retention in the Navy on 26 April 1984 after receiving a fourth NJP for two specifications of failure to obey a lawful order. On 11 October 1984, you were convicted by a

civilian court for assault and battery and subject to confinement in the hands of civil authorities. Your command determined your period of absence during confinement to be unexcused, and you received a fifth NJP on 5 December 1984 for unauthorized absence. You then received a sixth NJP on 29 January 1985 for a third assault, and subsequently a seventh NJP for a fourth assault on 2 April 1985, at which point your command notified you of administrative separation for pattern of misconduct based on frequent involvement of a discreditable nature with military and civilian authorities and commission of a serious offense. You signed this notification and acknowledgment of your rights, waiving your right to counsel and your right to an administrative separation board. You submitted a statement on your own behalf requesting expedited processing for separation and stated that your current situation indicated you were unfit to continue serving in the Navy. Your separation was approved, and you were discharged on 18 April 1985 with an other than honorable characterization of service.

The Board carefully considered all potentially mitigating factors to determine whether the interests of justice warranted 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 contention that you suffered PTSD while serving in the Navy which worsened during your period of service, causing you to suffer flashbacks and racing thoughts, which has since resulted in a diagnosis of service-connected PTSD with a rating of 100% disability by the Department of Veteran's Administration (VA). You further contend that you never received treatment or support, and that your condition was not taken into account during disciplinary proceedings. In reviewing your contention of suffering PTSD, and in the absence of a diagnosis rendered by a licensed psychiatrist or psychologist, the Board applied liberal consideration to evidence which might support the existence of that diagnosis and of those conditions occurring in-service and also considered the AO in making its determination. The AO noted that you did not describe any traumatic events, symptoms, or behavioral changes that would support a diagnosis of a mental health (MH) condition and that, although your service medical records are unavailable, your service record contains no evidence indicative of an MH condition, nor is there any indication that either you or your command raised concerns for your mental health during disciplinary actions, administrative counseling, or separation proceedings prior to your discharge. Although you provided documentation of the VA's determination that you suffer from one or more service-connected disabilities with a 100% rating, these records do not provide any indication of a specific clinical diagnosis or the basis of any such diagnosis. As a result, the opinion of the AO assessed that the preponderance of available, objective evidence failed to establish that you suffered from an unfitting MH condition at the time of your military service or that your misconduct could be attributed to an unfitting MH 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. In accordance with the Kurta memo, the Board also noted that premeditated misconduct, such as larceny, is not generally excused by mental health conditions, and you provided insufficient evidence to assess whether any potential causal relationship exists between your asserted conditions and your premeditated misconduct. Based upon this review, the Board concluded that the potentially mitigating factors you contended were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your civil conviction and seven

NJPs in less than 3 years of a single enlistment 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,

1/9/2022

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Executive Director

Signed by: █