

DEPARTMENT OF THE NAVY

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

> Docket No: 3967-21 Ref: Signature Date

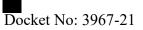


Dear Petitioner:

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 12 January 2022. 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). The Board also considered an advisory opinion (AO) from a qualified mental health professional dated 4 November 2021, which was previously provided to you.

You enlisted in the Navy and began a period of active duty on 1 October 1978. On 14 November 1979 and 27 February 1980, you received non-judicial punishment (NJP). Your offenses were failure to obey a lawful order issued by a superior noncommissioned officer (NCO), absence from your appointed place of duty on two occasions, willfully disobeying a lawful command from a superior commissioned officer, and false official statement. On 27 February 1980, you were issued an administrative remarks counseling concerning your frequent involvement of a discreditable nature with military authorities, and you were warned that further involvement of military disciplinary proceedings may result in your processing for administrative separation by reason of misconduct. On 13 August 1980 and 24 September 1980, you received your third and



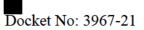
fourth NJP for an unauthorized absence, wrongful appropriation of a vehicle decal property of the United States Government and absence from your appointed place of duty, to wit: Armory Security Watch. On 14 November 1980, you were convicted by summary court-martial (SCM) of two specifications of failure to go to your appointed place of duty, wrongful possession of marijuana, and failure to obey a lawful order by wrongfully wearing civilian clothing. On 24 December 1980, you received your fifth NJP for three specifications of unauthorized absence, disobeying a lawful order from a superior NCO, and disrespect in language toward a superior NCO.

On 19 February 1981, you were notified that you were being recommended for administrative discharge from the Navy by reason of misconduct due to frequent involvement of a discreditable nature with military authorities. You were advised of, and exercised, your procedural right to consult with and to be represented by military counsel, and to present your case to an administrative discharge board (ADB). Prior to the convening of your ADB, on 24 February 1981, you were again convicted by SCM of six specifications of failure to go to your appointed place of duty at the time prescribed and two specifications of failure to obey a written order.

On 24 March 1981, your ADB was convened and found that you committed misconduct and recommended your administrative separation from the Navy with an other than honorable (OTH) characterization of service. Your commanding officer (CO) then forwarded your administrative separation package to the separation authority (SA) recommending your administrative discharge from the Navy with an OTH characterization of service. The SA approved the recommendation and directed your administrative discharge from the Navy with an OTH characterization of service by reason of misconduct due to frequent involvement of a discreditable nature with military authorities. On 27 March 1981, you were so discharged.

As part of the Board's review, a qualified mental health professional reviewed your request and provided the Board with an AO on 4 November 2021. The AO noted that your service record contained a diagnosis of a mental health condition that did not render you unfit for service. The AO further noted that you provided post-service evidence that you incurred an unfitting mental health condition, Persistent Depressive Disorder, in service. However, there is insufficient information regarding your symptoms to consider whether a mental health condition may have mitigated the your misconduct. An unauthorized absence (UA) could be behavior symptomatic of Persistent Depressive Disorder, but your statements in service are counter to your current contention that you did not use marijuana in service. Additional information, such as post service records describing your mental health symptoms and their specific link to your misconduct, are required to render an alternate opinion. Should you choose to submit additional records, they will be reviewed in context of your claims. The AO concluded by opining that there is post-service evidence that you may have incurred an unfitting mental health condition during your military service, but there is insufficient evidence that all of your misconduct could be mitigated by a mental health condition.

The Board carefully reviewed your application, weighed all potentially mitigating factors, and considered your contentions that: 1) you were singled out on different occasions, harassed, and treated unfairly because of your race; 2) you experienced racist threats for no apparent reason;



3) you were awarded an "honorable discharge" from a "review board." The captain in charge decided to keep you in the Navy and harassed you until he could kick you out of the Navy, and not give you your honorable discharge; 4) you never disrespected anyone, or disobeyed any order, never got into any fights, or arguments, only in self-defense; 5) you have never had a drug problem, even though you were drug tested repeatedly; and 6) the unfair treatment you received should not prevent you from receiving the honorable discharge that you deserve. After careful consideration of the AO, your submission of supporting documentation, and applying liberal consideration, the Board did not find an error or injustice that warrants upgrading your characterization of service or granting clemency in the form of an upgraded characterization of service.

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 contentions' as previously discussed and your desire to upgrade your discharge character of service. Based upon this review, the Board concluded your potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct as evidenced by your five NJPs and two SCM convictions outweighed these mitigating factors. Accordingly, given the totality of the circumstances, the Board determined your request does not merit relief.

You are entitled to have the Board reconsider its decision upon 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.

