



**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: 4122-21  
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 18 February 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 the advisory opinion (AO) furnished by a qualified mental health provider which was previously provided to you, the documents you submitted in rebuttal, and a subsequent AO.

You enlisted and began a period of active duty in the Navy on 22 September 1993. On 26 May 1994, you received nonjudicial punishment (NJP) for shoplifting a video game cartridge valued at \$62.95 in violation of Article 121, Uniform Code of Military Justice (UCMJ). You received a second NJP on 14 March 1995 for two specifications of assault, and drunk and disorderly conduct in violation of Articles 128 and 134, UCMJ. On 28 March 1995, you received a third NJP for three specifications of failure to go to your appointed place of duty and for breaking restriction in

violation of Articles 86 and 134, UCMJ. On 29 March 1995, you were notified of administrative separation processing by reason of misconduct due to commission of a serious offense and you exercised your right to request an administrative discharge board (ADB) to review your case. However, on 21 April 1995, you were convicted by summary court martial (SCM) for breaking restriction in violation of Article 134, UCMJ. The ADB convened on 6 June 1995 and unanimously substantiated that misconduct had occurred as to the first NJP, and recommended your retention in the service. On 7 June 1995, an incident occurred in which you were placed on international legal hold pending charges by civilian authorities for driving under the influence of alcohol and driving an unregistered vehicle. On 31 July 1995, the Chief of Naval Personnel recommended to the Assistant Secretary of the Navy (M&RA) that you be administratively separated for misconduct due to commission of a serious offense with a General (Under Honorable Conditions) characterization of service. You were so discharged on 13 August 1995.

You contend that you experienced two head injuries while in-service that resulted in TBI, depression, aggression, and alcohol abuse that contributed to your misconduct. You state you were stationed in ██████████ extremely homesick, and your attempt to steal a video game was a cry for help because at that time your depression symptoms had begun.

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 noted above, desire to upgrade your discharge, and post-service accomplishments. The Board also relied on the AO in making its determination. The AO noted that you described your depressive symptoms, alcohol use disorder, and larceny (including subsequent NJP) as occurring out of "extreme homesickness," and further noted these issues originated prior to your initial head injury. Consequently, the AO concluded that although you carry post-discharge diagnoses of mental health conditions to include Mood Disorder and TBI with Department of Veterans Affairs (VA) disability benefits, the preponderance of objective evidence failed to establish your in-service misconduct could be attributed to TBI or other unfitting mental health conditions. Based upon this review, the Board concluded that the potentially mitigating factors in your case were insufficient to warrant relief. Specifically, the Board determined that the seriousness of your misconduct, as evidenced by your three NJPs and SCM, outweighed these mitigating factors. In the Board's opinion, your discharge characterization is already sufficiently mitigated since you committed multiple offenses that, individually, normally qualify for an Other than Honorable characterization of service. Accordingly, given the totality of the circumstances, the Board determined that your request does not merit relief. Additionally, whether or not an individual is entitled to veterans' benefits is a matter under the cognizance of the VA. You may contact the nearest office of the VA concerning your right to apply for benefits. If benefits have been denied, you may be able to appeal the denial under procedures established by the VA.

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.

Sincerely, \_\_\_\_\_

3/9/2022

[REDACTED]

Executive Director

[REDACTED]