



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

██████████
Docket No: 4137-21
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, 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, sitting in executive session, considered your application on 14 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 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, applicable statutes, regulations, and policies, to include 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 determined that your personal appearance, with or without counsel, would not materially add to their understanding of the issues involved. Therefore, the Board determined that a personal appearance was not necessary and considered your case based on the evidence of record.

You enlisted in the Navy and began a period of active duty on 25 November 1992. You received emergency medical care for complaints of fatigue and inability to maintain focus on 9 May 1993, and shortly thereafter, were hospitalized from 21 May through 27 May 1993 for treatment and observation of an adult case of varicella (chicken pox). Your in-service misconduct did not begin until nearly a year later, on 2 February 1994, when you failed to go to your appointed place of duty. On 25 February 1994, you sought medical care for complaints of fatigue and difficulty breathing while sleeping, and your medical records indicate the need to rule out possible sleep apnea. You missed movement on 27 February 1994 and remained in a status of unauthorized absence (UA) until 29 April 1994. During that UA, between the dates of 6 March 1994 to 24 March 1994, you also issued 41 bad checks. Upon returning, you were convicted by special

court-martial for three specifications of Article 86, UA, and 41 specifications of Article 123a, making checks without sufficient funds. Your adjudged punishment included reduction in rank, 90 days confinement, and a bad conduct discharge. During your confinement, you were also screened for alcohol use and recommended for level II treatment based on your abuse of alcohol. You began appellate leave on 9 September 1994 and were discharged on 5 October 1995 following the completion of appellate review.

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 that you suffered from mental health conditions and well as significant health problems which affected your ability to sleep and led to fatigue and poor judgment, and that your experience of chicken pox during your military service has caused you to develop febrile seizures. The Board noted that you submitted evidence of your post-service medical conditions; the Board also relied on the AO during its deliberations. The AO observed that you had previously contended to the Naval Discharge Review Board (NDRB) that your alcohol abuse led to your misconduct. The AO identified that your in-service medical records indicate that you were seen by medical for complaints of fatigue and potential sleep apnea and that you were hospitalized for varicella; however, your in-service records reflect no mental health diagnosis. Although you were evaluated for alcohol abuse, there is likewise no indication that condition resulted from a mental health condition, nor do your post-service records contain evidence of a mental health condition.

The Board concurred with the AO in its opinion that the preponderance of available, objective evidence failed to establish that you suffered from a mental health condition during your service which might have mitigated your misconduct. The Board further noted that, in accordance with the guidance in the Kurta memo, premeditated misconduct such as issuing checks with insufficient funds would not normally be mitigated by a mental health condition. Based upon this review, the Board concluded that the potentially mitigating factors which you contended were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your conviction by special court-martial and sentence of a bad conduct discharge, 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,

1/28/2022

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Executive Director
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