

DEPARTMENT OF THE NAVY

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

> Docket No: 4260-21 Ref: Signature Date



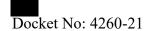
Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to Title 10, United States Code, Section 1552. After careful and conscientious consideration of the entire record, the Board for Correction of Naval Records (Board) found the evidence submitted was 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 10 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). Additionally, the Board considered a \ 15 November 2021 advisory opinion (AO) furnished by a qualified mental health provider, which was provided to you, and to which you did not provide a response.

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 commenced a period of active duty on 28 October 1996. On 22 April 2005, you were arrested by civilian authorities, which resulted in your conviction by civilian authorities for lewdness in the presence of a child. On 1 December 2005, the discharge authority directed that you be discharged with a general (under honorable conditions)



characterization of service, and on that day you were so discharged. In 2007, you filed an application with the Naval Discharge Review Board (NDRB). On 31 January 2008, the NDRB denied your application, stating that the issue you raised is one that the NDRB, "cannot form the basis of relief for the Applicant, or one that the Board does not have the authority to grant"

The Board carefully considered all potentially mitigating factors in your petition to determine whether the interests of justice warrant relief in your case including in accordance with the Wilkie Memo. You contend in your petition that the misconduct that you engaged in while on active duty should be mitigated by PTSD that you suffered as a result of the stressful nature of your job when you were in the Navy as a search and rescue Hospital Corpsman. You provided medical documentation in support of your petition, including documentation from the Department of Veterans' Affairs (VA).

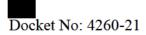
In connection with your assertion that you suffered from PTSD, the Board requested, and reviewed, the AO. The AO reviewed your service record as well as your petition and the matters that you submitted, including the records you provided from the VA. According to the AO:

The Petitioner's service record contained evidence of an in-service traumatic event. His post-service VA records provide evidence of a diagnosis of PTSD that can be attributed to military service. However, based on the available evidence, there is insufficient evidence that his misconduct should be attributed to his mental health condition. Mental health records documenting a linkage between his diagnosis and his misconduct are required to render an alternate opinion. Should the Petitioner choose to submit additional records, they will be reviewed in the context of his claims.

The AO concluded, "it is my considered medical opinion that there is evidence of a diagnosis of PTSD attributed to military service but there is insufficient evidence that his misconduct may be mitigated by PTSD."

Based upon its review, the Board concluded the potentially mitigating factors that you raised were insufficient to warrant relief. With respect to your contention, which related to a mental health condition, the Board concurred with the findings of the AO that there is insufficient evidence that your misconduct should be attributed to your mental health condition. Accordingly, based on its careful review of your contention, 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.

