



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

■
Docket No: 4571-21
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 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 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, 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 also considered the advisory opinion (AO) furnished by 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.

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 United States Marine Corps and began a period of active duty on 23 August 1989. On 29 June 1994, you reenlisted for a period of three (3) years. On 7 July 1994, you were counseled concerning deficiencies of tardiness on several occasions, specifically during

deployment and advised that failure to take corrective action may result in administrative separation or limitation of further service. Although provided with an opportunity to submit a written rebuttal you chose not to do so. On 29 July 1994, you received a second counseling for driving with a suspended driver's license and driving under the influence (DUI) of alcohol. You were again advised that failure to take corrective action might result in administrative separation or limitation of further service and again chose not to submit a statement in rebuttal. As a result of your DUI, you were counseled regarding your eligibility but non-recommendation for promotion to Sergeant. On 29 June 1995, you were found guilty at a special court-martial (SPCM) of three (3) specifications of sexual harassment, adultery, making a false statement while under oath, and wrongful endeavor to impede an investigation. You were sentenced to be confined for 110 days, to forfeit \$350.00 pay per month for three (3) months, to be reduced in rank to E-1, and to be discharged with a Bad Conduct Discharge (BCD) characterization of service. On 5 April 1996, your sentence was affirmed and you were so discharged.

As part of the Board's review, a qualified mental health professional reviewed your request for correction to your record and provided the Board with an AO regarding your assertions that: (1) your discharge was a result of trauma you endured during your military career, (2) your anxiety then and now are directly related to your military experiences, training, and war efforts, (3) you still have night terrors and need assistance, (4) your experience has negatively impacted you for life, (5) you are unable to obtain benefits or military assistance due to your current discharge status and characterization of discharge, (6) you need help, and (7) you were unaware, until recently, that relief was possible.

The AO noted there is no evidence in your limited service record that you were diagnosed with a mental health condition nor did you provide post-service medical records indicating a mental health diagnosis. The AO opined, based on the current available evidence, there is insufficient evidence that you incurred a mental health condition during your military service, and there is insufficient evidence that your misconduct should be attributed to a mental health condition.

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. The Board viewed your allegations with serious concern. However, this Board is not an investigating agency nor does it have the resources to investigate unsubstantiated allegations. Additionally, the Board noted you did not submit advocacy letters or post-service documents to be considered for clemency purposes. Based upon this review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your SPCM, outweighed these mitigating factors. 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 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,

1/20/2022

█

Executive Director

█