



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

█
Docket No: 4905-21
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.

A three-member panel of the Board, sitting in executive session, considered your application on 5 November 2021. 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 25 August 2017 guidance from the Office of the Under Secretary of Defense for Personnel and Readiness (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.

You enlisted and began a period of active duty in the Marine Corps on 6 June 1989. You participated in Operation Desert Shield/Desert Storm from 21 November 1990 to 18 July 1991. You received nonjudicial (NJP) punishment on 11 August 1992 for false official statement by altering your check out document with the intent to deceive in violation of Article 107, Uniform Code of Military Justice (UCMJ). On 18 September 1992 you received your second NJP for wrongful use of amphetamine/methamphetamine in violation of Article 112a, UCMJ. The same day you were notified of administrative separation processing by reason of misconduct due to drug abuse and you waived your procedural rights. You were medically evaluated and found to be physiologically and psychologically dependent on drugs and alcohol. On 3 November 1992 the separation authority directed your discharge under other than honorable conditions and further directed your commanding officer to initiate action to transfer you to a Veterans Administration (VA) Medical Facility with treatment capabilities pursuant to the applicable reference. Prior to your discharge, your command became aware of additional misconduct that occurred during September

and October 1992. Consequently, you were convicted by special court martial on 5 April 1993 of wrongful methamphetamine use on diverse occasions; wrongful appropriation of a Lance Corporal's wallet, identification card, and some amount of money; and three specifications of insufficient funds in violation of Articles 112a, 121, and 134, UCMJ. The military judge sentenced you to confinement, reduction in rank, a fine, and to be separated from the service with a bad conduct discharge. On 16 December 1993 you completed Level III intensive inpatient treatment. You were subsequently placed on voluntary appellate leave and offered voluntary in-patient treatment at a VA hospital for substance abuse. Your SPCM findings and sentence were affirmed and you were separated on 10 February 1995 with a bad conduct discharge.

You contend that: (a) you returned from the Gulf and your life was different; (b) you experienced symptoms of PTSD that scared your wife; (c) she took your two children and left without telling you where they were; (d) you became depressed and started drinking and using drugs to numb the pain; (e) you did not contest the charges because you wanted out of the service as soon as possible so you could find your children; (f) the police found your children a year later, you received full custody, and your wife went to jail; (g) you had to give your mother custody because of your constant struggle with PTSD, depression, drugs, and alcohol; and (h) your children grew up to be happy, productive citizens and have given you three beautiful grandchildren.

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 and desire to upgrade your discharge. The Board also relied on the AO in making its determination. The AO noted that your in-service records corroborated exposure to combat, and subsequent psychological symptoms and behavioral changes including misconduct, that are consistent with emerging PTSD. However, the AO further concluded that your misconduct behaviors of false official statements, check fraud, and theft are behaviors not typically associated with someone suffering from PTSD. In its deliberations, the Board determined that there was insufficient evidence to support a nexus between your condition and the premeditated nature of the majority of your misconduct. 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 your misconduct, as evidenced by your two NJPs and 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, _____

11/15/2021

[REDACTED]

Executive Director

[REDACTED]