



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: 5248-21
Ref: Signature Date



Dear ■:

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.

A three-member panel of the Board, sitting in executive session, considered your application on 13 December 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 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, 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). In addition, the Board considered the advisory opinion (AO) furnished by a qualified mental health professional dated 22 October 2021, which was previously provided to you.

You enlisted in the Navy and began a period of active duty on 29 September 1988. On 4 October 1988, you were, briefed on the Navy's policy regarding drug and alcohol abuse. On 26 October 1989, you received nonjudicial punishment (NJP) for unlawfully striking a petty officer in the face with your fist. On 9 February 1990, you received NJP for using disrespectful language towards a chief petty officer, and drunk and disorderly conduct. On 5 October 1990, you completed treatment at an Alcohol Rehabilitation Center, and were directed to report to your command Drug and Alcohol Program Advisor. On 6 November 1990, you were notified that you were being retained in the Navy, counseled regarding your pattern of alcohol abuse and civil misconduct, and warned that further deficiencies could result in administrative discharge action. On 30 September and 21 October 1991, you received NJP for drunk and disorderly conduct. On 28 October 1991, you were, counseled regarding unauthorized absence (UA) and warned that

further deficiencies in your performance or conduct could result in administrative discharge action. On 26 May 1992, you were convicted by special court-martial (SPCM) of 53 days of UA, and missing ship's movement through neglect. You were sentenced to a period of confinement, a forfeiture of pay, and a reduction in paygrade. On 17 July 1992, you received NJP for three specifications of assault consummated by a battery, use of provoking speech, drunk and disorderly conduct, and two specifications of wrongful use of a controlled substance. On 23 July 1992, you were notified of administrative discharge action by reason of misconduct due to commission of a serious offense, a pattern of misconduct, and misconduct due to drug abuse. After being advised of your procedural rights, you waived your right to have your case heard by an administrative discharge board. On 5 August 1992, you declined a resident rehabilitation program due to alcohol/drug dependency prior to your discharge via the Veterans' Administration Hospital, and excepted an expeditious discharge. On 13 August 1992, your case was forwarded to the separation authority with the recommendation that you receive an other than honorable discharge. On 14 September 1992, the separation authority directed that you receive an OTH discharge due to misconduct. On 14 October 1992, you were discharge from the Navy with an OTH characterization of service due to a pattern of misconduct.

A qualified mental health professional reviewed your request for correction to your record and provided the Board with an AO regarding your assertion that you were suffering from Post-Traumatic Stress Disorder and a mental health condition during your service. The AO noted that based on the current available evidence, there is some post-service evidence that you may have incurred PTSD or another mental health condition during military service, but there is insufficient evidence that your misconduct could 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 assertions that: (a) while in-service you suffered from undiagnosed PTSD and depression; (b) the depression and PTSD began after deploying to the Gulf War; (c) you developed problems with alcohol and received counseling; (d) you did not receive any counseling or psychological services for your other mental health issues; and (e) you believe, along with your professional therapist, that your behavior is directly related to your struggles with mental health that came after your service in the Gulf War. 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 five NJPs, conviction by SPCM, the fact that you were briefed on the Navy's policy regarding drug and alcohol abuse, and warned of the consequences of further misconduct on more than one occasion outweighed these mitigating factors. The Board also concurred with the AO that based on the current available evidence, there is some post-service evidence that you may have incurred PTSD or another mental health condition during military service, but there is insufficient evidence that your misconduct could be attributed to a mental health condition. 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,

12/20/2021

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Executive Director

Signed by: █