



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: 5675-21
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 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.

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.

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 25 February 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). The Board also considered the advisory opinion (AO) furnished by a qualified mental health provider, which was previously provided to you. Although you were afforded the opportunity to submit a rebuttal, you did not do so.

You enlisted and began a period of active duty in the Navy on 5 July 1989. On 24 August 1990 you received nonjudicial punishment (NJP) for a three day unauthorized absence (UA) in violation of Article 86, Uniform Code of Military Justice (UCMJ). You received a second NJP on 2 February 1991 for a seven day UA in violation of Article 86, UCMJ. On 8 June 1992 you were convicted by special court martial for a 29 day UA and larceny of a postal money order in the amount of \$273.66 in violation of Articles 86 and 121, UCMJ. You were notified of administrative separation

processing on 8 September 1992 by reason of misconduct due to commission of a serious offense and pattern of misconduct as evidenced by your service record entries. You waived your procedural rights and declined rehabilitation treatment at a Department of Veterans Affairs (VA) hospital prior to discharge. On 12 November 1992 you were discharged with an other than honorable (OTH) characterization of service.

You contend you served during the Persian Gulf War and later received an unjust court martial. You state that after completing your disciplinary obligations you waived your next duty assignment and were released with an OTH. You further contend you would like to obtain VA benefits. You also contend you suffer from PTSD.

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 service record did not contain evidence of a diagnosis of a mental health condition or reported psychological symptoms or behavioral changes indicative of a diagnosable unfitting mental health condition. Consequently, the AO concluded that the preponderance of available objective evidence failed to establish you suffered from a mental health condition at the time of your military service or that your in-service misconduct could be mitigated by a mental health condition. 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. Additionally, whether or not an individual is entitled to veterans' benefits is a matter under the cognizance of the VA. You may contact the nearest office of the VA concerning your right to apply for benefits. If benefits have been denied, you may be able to appeal the denial under procedures established by the VA.

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,

3/14/2022

