



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: 5680-21
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 31 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 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.

You enlisted in the U.S. Navy and began a period of active duty on 7 September 1984. On 13 September 1984 and 7 June 1985, you were briefed on the Navy's drug and alcohol abuse policy. On 28 February 1990, you reenlisted for a period of five (5) years. On 3 September 1994, you commenced a period of unauthorized absence (UA) totaling 193 days which lasted until you were apprehended on 15 March 1994. On 28 September 1994, you were convicted at a special court-martial (SPCM) of the aforementioned UA, missing ship's movement and wrongfully using

cocaine. You were sentenced to be confined for 90 days, to be reduced in rank to E-1 and to be separated with a bad conduct discharge (BCD).

Unfortunately, the documents related to your administrative separation are not in your official military personnel file (OMPF). In this regard, the Board relies on a presumption of regularity to support the official actions of public officials and, in the absence of substantial evidence to the contrary (as is the case at present), will presume that they have properly discharged their official duties.

Your Certificate of Release or Discharge from Active Duty (DD Form 214), reveals that you were separated from the Navy on 18 April 1995 with a BCD characterization of service, your narrative reason for separation is "Court-Martial Conviction," your separation code is "JJE," and your reenlistment code is "RE-4."

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 a private psychologist determined you were suffering from undiagnosed PTSD. The AO noted your official military personnel file (OMPF) did not contain evidence of a diagnosis of a mental health condition or reported psychological symptoms/behavioral changes indicative of a diagnosable unfitting mental health condition. The AO opined the available objective evidence failed to establish you suffered from PTSD at the time of your military service or your in-service misconduct could be mitigated by 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. Additionally, the Board noted you did not provide a statement, 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 concurred with the AO and determined that your misconduct, as evidenced by your SPCM and drug use, 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,

2/15/2022

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Executive Director

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