



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

■
Docket No: 6116-21
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 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 14 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 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 2 December 2021, which was previously provided to you.

You enlisted in the Navy and began a period of active duty on 11 May 1992. On 12 May 1992, you were informed that you were being retained in the Navy despite your defective enlistment due to fraudulent entry, as evidenced by your failure to disclose your pre-service civil involvement involving joyriding, assault (fighting at school) and violation of probation. On 10 May 1993, you submitted request for an other than honorable (OTH) discharge in lieu of court-martial for 16 days of unauthorized absence, failing to go to appointed place of duty (messenger of the watch), three specifications of disobeying a lawful order, two specifications of using disrespectful, and resisting apprehension. Prior to submitting this request for discharge, you conferred with a qualified military lawyer, were advised of your rights and warned of the probable adverse consequences of accepting such a discharge. Additionally, you submitted a

personal statement regarding your misconduct. Subsequently, your request for discharge was granted and on 16 July 1993, you received an OTH discharge in lieu of trial by court-martial. As a result of this action, you were spared the stigma of a court-martial conviction and the potential penalties of a punitive discharge and confinement at hard labor.

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 PTSD during your service. The AO noted that based on the available evidence, there is insufficient evidence that you incurred PTSD or another unfitting mental health condition during military service, and there is insufficient evidence that your misconduct could be attributed to PTSD or another unfitting 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 you were suffering from undiagnosed anxiety and depression during your military service, which contributed to your misconduct. 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 misconduct leading to the referral of charges to a court-martial, and your request for discharge outweighed these mitigating factors. The Board believed that considerable clemency was extended to you when your request for discharge was approved. The Board also concurred with the AO that based on the available evidence, there is insufficient evidence that you incurred PTSD or another unfitting mental health condition during military service, and there is insufficient evidence that your misconduct could be attributed to PTSD or another unfitting 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,

2/16/2022

█
Executive Director
█