

## **DEPARTMENT OF THE NAVY**

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

Docket No: 6326-21

4875-97 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.

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 4 March 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 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.

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.

You enlisted and began a period of active duty in the Navy on 13 September 1988. On 17 May 1989, you received nonjudicial punishment (NJP) for disobeying a lawful order, provoking gestures, and simple assault in violation of Articles 92, 117, and 128, Uniform Code of Military Justice (UCMJ). Your second NJP occurred on 17 June 1989 for misbehavior of a sentinel or lookout in violation of Article 113, UCMJ. On 12 December 1989, you received a third NJP for failure to

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obey a lawful order in violation of Article 92, UCMJ. Your final NJP occurred on 6 February 1991 for failure to obey a lawful order in violation of Article 92, UCMJ. On 17 February 1991, you were notified of administrative separation processing by reason of commission of a serious offense and misconduct due to a pattern of misconduct. You waived your right to consult with counsel and to have your case heard by an administrative discharge board. Your commanding officer recommended that you receive an other than honorable characterization of service and you were so discharged on 16 April 1991. This Board previously denied your application for an upgrade to your characterization of service on 7 April 1999.

In your request for reconsideration, you contend that you were certified as the youngest auxiliary systems monitor on your ship. You further state during the crisis you contracted a condition that resulted in the surgical removal of your right testicle and this experience was traumatizing and led to the incidents resulting in your separation. Finally, you indicated on your application that PTSD was related to your request.

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, desire to upgrade your discharge, and post-service accomplishments. The Board also relied on the AO in making its determination. The AO noted that there was no evidence that you were diagnosed with a mental health disorder in service and you did not provide any post-service medical evidence in support of your claim. Additionally, your statement does not provide sufficient detail to determine a nexus with your misconduct as the majority of the misconduct occurred prior to the hospitalization to treat your condition. Consequently, the AO concluded that there was insufficient evidence that you may have incurred PTSD during military service or that your misconduct could be attributed to PTSD. 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 four NJPs, outweighed these mitigating factors. In making this finding, the Board considered that two of your NJPs occurred prior to your medical issue with your testicle. 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.

