

## **DEPARTMENT OF THE NAVY**

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

> Docket No: 6470-21 Ref: Signature Date

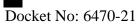


This is in reference to your application for correction of your naval record pursuant to Section 1552 of Title 10, United States Code. After careful and conscientious consideration of relevant portions of your naval record and your application, the Board for Correction of Naval Records (Board) found 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 limitation 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 16 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 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 an advisory opinion (AO) from a qualified mental health professional dated 11 February 2022 along with your response to the AO.

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 in the Navy and began a period of active duty on 11 July 1989. On 30 June 1992, you submitted a written request for separation in lieu of trial by court-martial for the following charges: Charge I: Conspire to wrongfully distribute some amount of cocaine; Charge II:

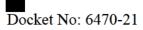


Unauthorized absence, totaling 19 days; and Charge III: Unlawfully carry on your person a concealed weapon, to wit: Model P-380 automatic handgun. Prior to submitting this request, you conferred with a military lawyer at which time you were advised of your rights and warned of the probable adverse consequences of accepting such a discharge. As part of this discharge request, you admitted your guilt to the foregoing offenses and acknowledged that your characterization of service upon discharge would be other than honorable (OTH). Your commanding officer (CO) then forwarded your request to the separation authority recommending approval of your request. Your CO also noted that Charge I of your perspective charges had been withdrawn and certified that the remaining charges were accurate. The separation authority approved your request and directed the CO to discharge you with an OTH characterization of service. As a result, you were spared the stigma of a court-martial conviction, as well as the potential penalties of a punitive discharge. You were discharged on 10 July 1992.

As part of the Board's review, a qualified mental health professional reviewed your request and provided the Board with an AO on 11 February 2022. The AO noted that there is no evidence that you were diagnosed with a mental health disorder during military service. Throughout your disciplinary processing, there were no concerns raised of a mental health condition that would have warranted a referral for evaluation. The AO further states that you have provided no postservice medical evidence in support of your mental health claims. While your service record confirms the stab injuries with on-going medical issues, the AO states there is limited behavioral evidence of PTSD symptoms in your service record. Additionally, while an unauthorized absence could be attributed to unrecognized avoidance consistent with PTSD, the AO concluded it is difficult to consider how cocaine distribution would be attributed to PTSD. Finally, the AO determined that though it is possible that carrying a concealed weapon could be indicative of hypervigilance symptoms associated with PTSD, it seems more likely that the concealed weapon was related to the dangers associated with the drug trade. The AO concluded additional records were required to render an alternate opinion and stated that there is insufficient evidence that you may have incurred PTSD during military service or that your misconduct could be attributed to PTSD.

The Board carefully reviewed your application, weighed all potentially mitigating factors, and considered your contentions that: 1) you were a young teenage kid whom made some mistakes and was influenced by others, which resulted in your involvement with drug use and developed a substance abuse problem. You further state that you have received help for your substance issues; 2) you no longer feel that you should be punished for mistakes you made as a teenager; and 3) you deserve to have your discharge upgraded and be allowed the benefits you earned for your time in service. Unfortunately, the Board, applying liberal consideration, relying on the AO, and noting you did not submit any documentation regarding your PTSD, did not find evidence of an error or injustice that warrants upgrading your characterization of service or granting clemency in the form of an upgraded characterization of service.

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 desire to upgrade your discharge character of service and contentions as previously discussed. For purposes of clemency consideration, the Board noted



your post-service record as evidenced by your statement; however, you did not provide supporting documentation describing post-service accomplishments, or advocacy letters.

Based upon this review, the Board concluded your potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your request to be administratively separated to avoid trial by court-martial, outweighed these mitigating factors. In reviewing the evidence of your misconduct, the Board concluded that the misconduct was serious and showed a complete disregard for military authority and regulations. Finally, the Board noted you received a benefit from being allowed to separate with an OTH character of service instead of risking greater punishment at a court-martial. As a result, the Board did not find evidence of an error or injustice that warrants upgrading your characterization of service or sufficient evidence to warrant clemency. 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.

