



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

█
Docket No: 6542-21
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.

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 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.

You enlisted and began a period of active duty in the Navy on 7 December 1982. On 15 December 1983 you received nonjudicial punishment (NJP) for wrongful use of marijuana in violation of Article 134, Uniform Code of Military Justice (UCMJ). You received a second NJP on 6 January 1984 for two specifications of Article 91, UCMJ; disrespect in language toward a superior petty officer and disobeying a lawful order from the commanding officer to muster with restricted men. On 8 June 1984 you received a third NJP for three specifications of unauthorized absence (UA) for

a one day, eight day, and twenty-one day period in violation of Article 86, UCMJ. Your final NJP occurred on 12 October 1984 for a forty-six day UA in violation of Article 86, UCMJ. On 15 October 1984 you were notified of administrative separation processing by reason of misconduct due to commission of a serious offense, pattern of misconduct, and drug abuse. You were discharged on 5 November 1984 with an other than honorable characterization of service.

You contend that while in-service you incurred a groin injury. You state that while off the coast of Beirut you assisted a Navy Seal in firing upon and destroying an aggressive fishing vessel which turned out to be innocent, civilian fishermen. You state you have nightmares and suffer from the fishing boat incident. You further contend you were ordered to illegally dispose of garbage into the sea, and that you also experienced the death of your grandfather.

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 there was no evidence that you were diagnosed with a mental health condition in-service. Furthermore, the information covered in the news report of an accidental collision with the fishing vessel is inconsistent with your account of a traumatic combat event. Consequently, the AO concluded that there was insufficient evidence that you incurred PTSD or another unfitting mental health condition during military service or that your misconduct could be attributed to PTSD or another unfitting 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 four NJPs, 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,

3/22/2022

█

Executive Director

Signed by: █