



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: 6583-21
4086-11
Ref: Signature Date

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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 22 December 2021. 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 9 December 2021, which was previously provided to you.

You enlisted in the Marine Corps and began a period of active duty on 13 March 1989. On 10 December 1989, you received non-judicial punishment (NJP) for failure to go to your appointed place of duty at the time prescribed, disrespect to a noncommissioned officer (NCO), disobeying a NCO, and failure to obey a lawful general regulation. On 9 August 1990, you received your second NJP for an unauthorized absence totaling four days. On 3 January 1991, you were convicted by special court-martial (SPCM) of dereliction in the performance of duty and using provoking words. You were awarded as punishment confinement, forfeiture of pay and a bad conduct discharge (BCD). The BCD was suspended for a period of 12 months. On

19 March 1993, at the completion of your required active service, you were issued a Certificate of Release or Discharge from Active Duty (DD Form 214) that annotated your characterization of service as general (under honorable conditions).

As part of the Board's review, a qualified mental health professional reviewed your request and provided the Board with an AO on 9 December 2021. The AO noted that your official military personnel file (OMPF) did not contain evidence of a diagnosis of a mental health condition. You submitted documentation that contained evidence of a post discharge diagnosis of post-traumatic stress disorder (PTSD) linked to your military service, as well as service-connection at a disability rating of 100 percent. Additionally, the AO noted that you exhibited some behaviors indicative of a mental health condition that would mitigate some, but not all of your misconduct. The AO concluded by opining that there is sufficient evidence you exhibited behaviors associated with PTSD during your military service and some of your misconduct may be mitigated by your PTSD.

The Board carefully reviewed your application, weighed all potentially mitigating factors, and considered your contention that you had PTSD, which was not diagnosed while you were serving. You were officially diagnosed by the Department of Veterans Affairs (VA) doctors with PTSD, major depressive disorder with anxious distress, and alcohol use disorder at 100 percent service connected. For purposes of clemency, the Board does not dispute your post service diagnosis of PTSD; however, the Board concluded there was insufficient evidence to attribute your misconduct to PTSD. Specifically, the Board noted your misconduct occurred prior to your traumatic experience as noted within the AO. Even applying liberal consideration, the Board determined your misconduct warranted a general (under honorable conditions) characterization of service. Unfortunately, after careful consideration of the AO, your submission of supporting documentation, and applying liberal consideration, the Board did not find 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 contention as previously discussed, your submission of supporting documentation, and your desire to upgrade your discharge character of service. Based upon this review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined your misconduct as evidenced by your two NJPs and SPCM conviction, outweighed these mitigating factors. The Board concluded your general (under honorable conditions) is appropriate as issued based on your misconduct. Accordingly, given the totality of the circumstances, the Board determined 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,

1/11/2022

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Executive Director

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