

DEPARTMENT OF THE NAVY

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

> Docket No: 6648-21 Ref: Signature Date

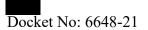


Dear Petitioner:

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 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 Board waived the statute of limitations 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 25 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 to 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 elemency determinations (Wilkie Memo). The Board also considered the advisory opinion (AO) furnished by a qualified mental health provider which was previously provided to you. You were afforded an opportunity to submit a rebuttal to the AO, which was received on 14 February 2022. To the extent that your rebuttal provided new information, the AO addressed your rebuttal information in a supplemental response which was also considered by the Board.

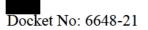
You enlisted in the Navy began a period of active service on 25 March 1986. On 14 August 1986, although you also had a previous period of unauthorized absence (UA) from 28 – 29 July 1986, you received nonjudicial punishment (NJP) for a single violation of Article 86, UA, for failure to go to your appointed place of duty on 7 August 1986. At that time, you were counseled on retention, advised of the potential for administrative separation, and provided with



sources of assistance. Upon completion of a brief period of restriction, you against absented yourself without authority on 26 August 1986; however, you were not punished for that offense. You received a second NJP for Article 86, UA, for a fifth period of absence from 30 January – 9 February 1987, and again were counseled on retention and the potential of separation for further misconduct. While in a restricted status, you subsequently committed multiple additional UA offenses from 1 – 8 March 1987, on 10 March 1987, on 21 March 1987, and from 24 March

13 April 1987, and received a third NJP on 15 April 1987 for Article 86, UA, and Article 134, breaking restriction. You served for approximately a year without further incident; however, you missed your ship's movement on 8 April 1988 and remained absent until 11 June 1988 when you were apprehended by civil authorities. While awaiting transfer to your ship, you again absented yourself from 20 – 24 June 1988 and 26 June – 31 July 1988, at which time you were placed into pre-trial confinement pending charges for your absences. You remained confined until 23 August 1988, but were released pending further disposition of your offenses. You were again placed on restriction from 7 – 9 October 1988 but then absented yourself without authority until again apprehended by civil authorities on 25 November 1988 for charges of grand theft auto. Your charges of Article 86, UA, Article 87, missing movement, and Article 134, restriction breaking, were tried before special court-martial (SPCM) on 6 January 1989, at which time you were sentence to a Bad Conduct Discharge (BCD), in addition to other punishments. You waived your right to review by the Clemency and Parole Board and began appellate leave. Your conviction and BCD were approved after appellate review, and you were finally discharged on 28 July 1989.

The Board carefully weighed all potentially mitigating factors, such as your desire to upgrade your characterization of service and your contention that you carried childhood trauma with you during your military service suffered during your experiences as a boy scout, which has continued to affect you throughout your adult life and resulted in symptoms and behaviors of a mental health condition which contributed to your in-service misconduct. Because you contend a mental health condition either incurred in or aggravated by active military service, the Board also considered the AO, which reviewed your service records and the supporting documents submitted with your request. The AO observed that your in-service records contain no evidence of diagnosis, symptoms, or behavioral changes indicative of such a mental health condition. The AO notes that, although you provided record that you are part of a lawsuit against the Boy Scouts of America due to childhood trauma, you submitted no evidence of post-service treatment or diagnoses addressing the onset of symptoms and behaviors or establishing a nexus between your contended mental health condition and misconduct. The Board concurred with the AO in its assessment that the preponderance of available evidence failed to establish that your in-service misconduct was mitigated by a mental health condition. The Board also considered your evidence of post-service elemency in an undated character letter from recommending you for a managerial or sales position and describing your many positive attributes as an employee. Although the Board notes that you are in the process of bettering yourself as a productive member of society, the Board concluded the potentially mitigating factors you submitted were insufficient to warrant relief at this time. Specifically, the Board determined that your misconduct evidenced by your two NJPs and SPCM for extensive periods of UA outweighed the mitigating factors you presented. 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 the 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 is attached 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,		
	3/10/2022	
Executive Director		
Signed by:		