

DEPARTMENT OF THE NAVY

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

> Docket No: 6708-21 Ref: Signature Date

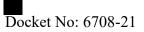


Dear Petitioner:

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.

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 2 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 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 Navy and began a period of active duty on 26 January 1984. On 3 March 1985, you received an administrative remarks (Page 13) counseling concerning deficiencies in your performance, to wit: unwilling to do assigned task, substandard appearance and poor attitude. On 18 July 1985, you received non-judicial punishment (NJP) for an unauthorized absence (1 day), failure to obey a lawful order and false official statement. On 21 November 1985, you received your second NJP for leaving your appointed place of duty, failure to obey a lawful order and dereliction of duty. On 20 December 1985, you received your third NJP for disrespect towards a Petty Officer and failure to obey a lawful order by signing a visitor onboard the

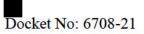


On 26 December 1985, you were notified that you were being recommended for administrative discharge from the Navy by reason of misconduct due to commission of a serious offense and pattern of misconduct. You were advised of, and exercised, your procedural right to consult with and to be represented by military counsel, and to present your case to an administrative discharge board (ADB). On 24 January 1986, an ADB was convened and determined that the preponderance of the evidence supported a finding of misconduct and recommended that you be separated from the Navy with an other than honorable (OTH) characterization of service. Your commanding officer (CO) then forwarded your administrative separation package to the separation authority (SA) recommending your administrative discharge from the Navy with an OTH characterization of service by reason of misconduct due to pattern of misconduct and on 7 March 1986, you were so discharged.

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 in-service record did not contain evidence of a diagnosis of a mental health condition or reported psychological symptoms/behavioral changes indicative of a diagnosable mental health condition. The depression or excessive worry noted on your separation physical may be attributable to your concern regarding your discharge characterization and possible difficulty obtaining civilian employment. The evidence you submitted supported a post-discharge diagnoses; however, it did not provide clarifying information about your mental health condition. The lack of clarifying information made available did not provide enough markers to establish an onset and development of mental health symptoms or identify a nexus with your misconduct. The AO concluded by opining that although you carried post-discharge mental health diagnoses, the preponderance of available evidence failed to establish you exhibited psychological symptoms/behaviors indicating a mental health condition while in-service or that your in-service misconduct may be mitigated by a mental health condition.

The Board carefully reviewed your application, weighed all potentially mitigating factors, and considered your contention that you felt that you were being discriminated against because of your race; at the time, you were 20 years old when this happened and it still affects you to this day. Unfortunately, after careful consideration of the AO 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 contentions as previously discussed 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 three NJPs, outweighed these mitigating factors. 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,		
	2/14/2022	
Executive Director		