

## DEPARTMENT OF THE NAVY

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

> Docket No: 6849-21 Ref: Signature Date



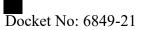
## Dear Petitioner:

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 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 15 June 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 the advisory opinion (AO) furnished by a qualified mental health professional dated 15 April 2022, which was previously provided to you. Although you were afforded an opportunity to submit an AO rebuttal, you did not do so.

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 commenced a period of active duty on 2 February 1983. On 11 March 1985, you issued an administrative remarks (Page 13) counseling concerning deficiencies in your performance and conduct, specifically, your involvement in an alcohol



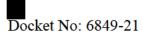
related incident (Driving Under Influence). You were advised that any further deficiencies in your performance and/or conduct may result in disciplinary action and in processing for administrative discharge. On 8 August 1986, you received non-judicial punishment (NJP) for dereliction in the performance of duty and simple assault. On 8 March 1988, you received your second NJP for wrongful use of cocaine. Subsequently, you were notified that you were being recommended for administrative discharge from the Navy by reason of misconduct due to drug abuse. You were advised of, and waived your rights to consult with military counsel and to present your case to an administrative discharge board (ADB). Your commanding officer (CO) then forwarded your administrative discharge from the Navy with an Other Than Honorable (OTH) characterization of service. The SA approved the CO's recommendation and directed your OTH discharge from the Navy. On 4 April 1988, you were discharged from the Navy by reason of misconduct due to drug abuse with an OTH 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 that you incurred depression following the harassment and degradation you experienced on Shellback Day, which you further state contributed to your substance use to cope with your mental health condition. Additionally, you assert that since your discharge, you have completely changed your life and you have received certifications in "EPS, Water Heater Repair, HVAC, and Pool Repair." You further state that you are a prominent member of society by mentoring boys and being a leader within your church, you are no longer on drugs and have not participated in any since 1994. For purposes of clemency consideration, the Board noted you provided advocacy letters but did not provide supporting documentation describing post-service accomplishments.

As part of the Board's review process, a qualified mental health professional reviewed your contentions and the available records and issued an AO dated 15 April 2022. The AO noted in pertinent part:

During military service, the Petitioner was diagnosed with a substance use disorder. Substance use is incompatible with military readiness and discipline and considered amenable to treatment, depending on the individual's willingness to engage in treatment. There is no evidence that he was not responsible for his behavior or unaware of his misconduct. Throughout his military processing, there were no concerns raised of another mental health condition that required evaluation. Unfortunately, he has provided no medical evidence in support of his claims. His current statements are temporally remote from military service and insufficient to establish a clinical diagnosis. Additional records (e.g., post-service mental health records describing the Petitioner's diagnosis, symptoms, and their specific link to his misconduct) are required to render an alternate opinion.

The AO concluded, "[b]ased on the available evidence, it is my clinical opinion that there is insufficient evidence of a mental health condition that could be attributed to military service, other than his substance use disorder identified during military service. There is insufficient



evidence that his misconduct could be attributed to a mental health condition other than his substance use disorder."

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 two NJPs, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact your misconduct included a drug offense. Additionally, the Board concurred with the AO and determined that there is insufficient evidence that your misconduct could be attributed to a mental health condition other than your substance use disorder. Finally, while the Board considered your advocacy letters and commended you for your post-discharge good character, they ultimately concluded that it was insufficient mitigation evidence to outweigh your misconduct. As a result, the Board determined your conduct constituted a significant departure from that expected of a Sailor and continues to warrant an OTH characterization. After applying liberal consideration, the Board 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. 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,	
	7/2/2022
Executive Director	
Signed by:	