



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: 7012-21
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 the entire record, the Board for Correction of Naval Records (Board) found the evidence submitted was 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 21 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 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 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). In addition, the Board considered the advisory opinion (AO) furnished by a qualified mental health professional dated 28 January 2022, which was previously provided to you. You were given 30 days in which to submit a response, and when you did not provide a response, your case was submitted to the Board for consideration

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 began a period of active duty on 10 June 1990. On 6 March 1992, you were convicted by summary court-martial (SCM) of unlawfully possessing a .380 caliber

revolver on board █. On 2 April and 8 July 1993, you received nonjudicial punishment (NJP) for disrespect toward a commissioned officer, going from your appointed place of duty and failing to go to your appointed place of duty, respectively. On 14 July 1993, you were notified of administrative discharge action by reason of a pattern of misconduct. After being afforded your procedural rights, you elected not to have your case heard before an administrative discharge board. On 28 July 1993, your case was forwarded to the separation authority recommending you receive an other than honorable (OTH) discharge. On 2 September 1993, the separation authority directed that you be separated from the Navy with an OTH discharge. On 13 September 1993, you were discharged from the Navy with an OTH characterization of service.

A qualified mental health professional reviewed your request for correction to your record and provided the Board with an AO regarding your assertion that you was suffering from a mental health condition during your service. The AO noted that based on the available evidence, there is insufficient evidence that you may have incurred PTSD or another unfitting mental health during your military service and that your misconduct could be attributed to PTSD or another unfitting mental health condition.

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 assertions that your reactions and responses in your situation was due to an undiagnosed or untreated mental health condition due to a traumatic event that took place during your tour of duty, and that you incurred PTSD after witnessing a crash of a helicopter while deployed during Operation Desert Storm. Based upon this review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your misconduct that resulted in your SCM and two NJPs, outweighed these mitigating factors. In reviewing your record of misconduct, the Board concluded it shows a complete disregard for military authority and regulations. The Board also concurred with the AO that based on the available evidence, there is insufficient evidence that your misconduct could be attributed to PTSD or another unfitting mental health condition. 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,

3/24/2022

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Executive Director

Signed by: █