

## **DEPARTMENT OF THE NAVY**

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

> Docket No: 7212-21 Ref: Signature Date



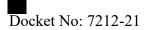
## Dear Petitioner:

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 23 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 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 31 January 2022, which was previously provided to you.

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 23 February 1983. You subsequently completed this enlistment with an Honorable characterization of service on 22 December 1986 and reenlisted on 23 December 1986. On 28 May 1987, you were convicted by a summary court-martial (SCM) of wrongful possession of alcohol in your privately owned



vehicle, wrongful use of cocaine, and assault upon a military police officer. On 1 July 1987, 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 procedural 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 separation package to the separation authority (SA) recommending 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 by reason of misconduct due to drug abuse. On 3 August 1987, 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 31 January 2022. The AO noted that there is no evidence that you were diagnosed with a mental health condition in service, although, you did demonstrate behavior consistent with a possible substance use disorder. Unfortunately, you have not provided any post-service medical evidence in support of your claims of mental health issues. Additionally, your statement does not provide sufficient detail to determine a nexus between a mental health conduct and your misconduct. The AO concluded that additional information is required to render an alternate opinion and stated that there is insufficient evidence that you may have incurred PTSD or another unfitting mental health condition during military service or that your misconduct could be attributed to PTSD or another unfitting mental health condition.

The Board carefully reviewed your application, weighed all potentially mitigating factors, and considered your contention that you acquired PTSD while in service, along with mental health issues, which were not detected while you were serving. You further state that your mother had passed away while you were serving and you saw dead bodies while you were in Beirut and Lebanon. Unfortunately, the Board, applying liberal consideration, relying on the AO, and noting you did not submit any documentation regarding your PTSD or other mental health condition, 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.

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 and your desire to upgrade your discharge character of service. For purposes of clemency consideration, the Board noted you did not provide supporting documentation describing post-service accomplishments, or advocacy letters. Based upon this review, the Board concluded your potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined your misconduct, as evidenced by your SCM, outweighed any mitigating factors. In making this finding, the Board noted you had a long history of drug abuse which showed a complete disregard for military authority and regulations. As a result, the Board determined your conduct was a significant departure from that expected of a Sailor and warrants an OTH characterization of service. Accordingly, given the totality of the circumstances, the Board determined your request does not merit relief.

Docket No: 7212-21

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.

