

DEPARTMENT OF THE NAVY

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

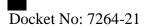
> Docket No: 7264-21 Ref: Signature Date

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 26 January 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 6 December 2021, which was previously provided to you.

You enlisted in the Navy and began a period of active duty on 10 October 1980. On 3 May 1981, you received non-judicial punishment (NJP) for misbehavior of sentinel and gun decking a log. On 23 June 1981, you were evaluated and diagnosed with situational reaction and passive dependent personality. Because of your diagnosed medical condition, you were recommended for administrative separation. On 7 July 1981, you were notified that you were being recommended for administrative separation from the Navy by reason of unsuitability. You were advised of, and exercised your procedural right to consult with military counsel. The separation authority subsequently directed your administrative discharge from the Navy by reason of



unsuitability with a general (under honorable conditions) characterization of service. On 24 July 1981, 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 6 December 2021. The AO noted that in-service, you were diagnosed with a personality disorder, indicating unsuitability for military service. You have not provided no post-service documentation of a mental health diagnosis, although the VA has determined service-connected disability. Unfortunately, there is insufficient information regarding your purported mental health condition to establish a nexus with your misconduct. Additional records are required to render an alternate opinion. The AO concluded by opining that there is insufficient evidence that you incurred an unfitting mental health condition during military service, and there is insufficient evidence that your misconduct could be attributed to an unfitting mental health condition

The Board carefully reviewed your application, weighed all potentially mitigating factors, and considered your contention that your depression was misdiagnosed as not able to adapt to military service. Unfortunately, after careful consideration of the AO, your submission of supporting documentation, 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 contention as previously discussed and your desire to upgrade your discharge character of service. For purposes of clemency consideration, the Board noted your submission of the Department of Veterans Affairs (VA) decision letter; however, you did not provide a statement or 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 NJP and your diagnosed medical condition, 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

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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.

