



**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: 7343-21  
8821-09  
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 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 26 January 2022 and your rebuttal response to the AO.

You enlisted in the Navy and began a period of active duty on 10 December 1985. On 20 November 1987, you received non-judicial punishment (NJP) for disrespect in language towards a noncommissioned officer, dereliction of duty and wrongfully communicating a threat. On 20 July 1989, you were convicted by a general court-martial (GCM) of assault, attempted rape, larceny, sodomy, and indecent assault. You were sentenced to confinement, reduction in rank, forfeiture of pay and a dishonorable discharge (DD). The DD was subsequently approved at all levels of review, and on 19 October 1992, 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 26 January 2022. The AO noted that in-service, you were diagnosed with a personality disorder, indicating that military service was not suitable to you. Unfortunately, you have provided limited post service medical evidence in support of your claims. Your statement and provided medical records are insufficiently detailed to establish the presence of an unfitting mental health condition or 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 may have incurred PTSD or another unfitting mental health condition during military service. Additionally, there is insufficient evidence that your misconduct could be attributed to PTSD or another unfitting mental health condition.

In your response to the AO, you state that you are not able to retrieve your medical records and that the records can only be obtained by this Board, the "Convening Authority." Be advised, this Board is not an investigating agency nor does it have the resources to investigate or request records or information on behalf of a Petitioner. To help facilitate your request to obtain the desired records or information you are requesting, you should contact the agencies in question to obtain the proper procedures for obtaining the desired information you are seeking.

The Board carefully reviewed your application, weighed all potentially mitigating factors, and considered your contention that your underlying medical conditions existed at the time of your discharge. 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. Based upon this review, the Board concluded your potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined the seriousness of your misconduct, as evidenced by your NJP and GCM conviction, outweighed these mitigating factors. In making this finding, the Board concurred with the AO and took into consideration the lack of any mental health symptoms at the time of your discharge from the Navy when weighing the mitigation evidence in your case against your misconduct. In addition, the Board weighed the seriousness the offenses that formed the basis of your GCM conviction and resulted in a sentence that included 45 years of confinement and a DD. 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,

3/7/2022

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Executive Director

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