

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

> Docket No: 7587-21 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 22 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 1 April 2022, which was previously provided to you. Although you were afforded an opportunity to submit an AO rebuttal, you did not do so

You enlisted in the Navy and began a period of active duty on 30 November 1974. On 24 December 1975, you commenced a period of unauthorized absence (UA) that concluded upon your surrender to civilian authorities on 13 January 1976. On 20 January 1976, you were issued an administrative remarks (Page 13) counseling concerning deficiencies in your military behavior and were advised that any further misconduct of a discreditable nature with either the civilian or military authorities may be grounds for administrative separation processing for a discharge under Other Than Honorable conditions. Subsequently, you completed treatment from the Naval Alcohol Rehabilitation Program. On 12 March 1976, you received non-judicial punishment

(NJP) for the foregoing period of UA. Additionally, the Commanding Officer (CO), Transient Personnel Unit (TPU) requested authority to administratively discharge you from the Navy with type warranted by service record (TWSR) characterization of service. The CO noted that you signed a Page 13 stating that you will accept a discharge for convenience of the government. On 15 March 1976, the separation authority granted the CO TPU the authority to process you for administrative discharge from the Navy. On 16 March 1976, you were discharged from the Navy with a General (Under Honorable Conditions) 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 PTSD following a combat tour to with the Army, that you began abusing alcohol during your subsequent Navy service to address the unrecognized symptoms, that in three-year interim between your separation from the Army and your decision to reenlist into the Navy, you had become aware that you were having a very difficult time readjusting to civilian life and your drinking had become a major problem, and that you were hoping that the "brotherhood" and camaraderie of military service would help you to get back some sort of normalcy. Additionally, you contend that you are grateful that the Navy sent you to an alcohol rehabilitation center prior to your discharge from the Navy. For purposes of clemency consideration, the Board noted your supporting documentation; however, you did not provide supporting documentation describing post-service accomplishments.

As part of the Board's review, a qualified mental health professional reviewed your request and provided the Board with an AO on 1 April 2022. The AO noted in pertinent part:

Among the available documents, there is no evidence that the Petitioner was diagnosed with a mental health condition during military service. Throughout his military processing, there were no concerns raised of a mental health condition that required evaluation. Unfortunately, he has provided no post-service medical evidence and no documentation of his purported Army service to support his claims. There is insufficient information regarding the Petitioner's medication overdose while UA to attribute it to a mental health condition. His personal statement is temporally remote from his military service and not sufficiently detailed to establish a clinical diagnosis or a nexus with his misconduct. Additional records (e.g., post-service 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 diagnosis of PTSD that may be attributed to military service. There is insufficient evidence that his misconduct could be attributed to PTSD."

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 NJP, outweighed these mitigating factors. In making this finding, the Board considered the brevity of your service and the seriousness of the offense you committed. Further, the Board also noted that there is no provision of federal law or in Navy/Marine Corps regulations that allows for a discharge to be automatically upgraded after a specified number of months or years. In addition, the Board concurred with the AO and determined that there is insufficient evidence of a diagnosis of PTSD that may be attributed to your military service, and there is insufficient evidence that your misconduct could be attributed to PTSD. Based on these factors, the Board concluded significant negative aspects of your active service outweighed the positive and continue to warrant a General (Under Honorable Conditions) characterization. While the Board commends your post-discharge good character, 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.

	7/7/2022
Executive Director	

Sincerely,