



**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: 0120-22  
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 30 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 20 January 2022, which was previously provided to you.

You enlisted in the Navy and began a period of active duty on 24 July 1973. During the period from 5 February 1975 to 9 December 1975, you received three instances of non-judicial punishment (NJP). Your offenses were an unauthorized absence totaling 60 days, violation of a written regulation, disrespect towards a superior noncommissioned officer, violation of a lawful general regulation, and failure to obey a lawful order. On 16 April 1980, you were convicted by a special court-martial (SPCM) of three specifications of unauthorized absence, totaling 1137 days. As punishment, you were sentenced to confinement, forfeiture of pay, reduction in rank, and a bad conduct discharge (BCD). On 24 July 1980, you received your fourth NJP for four specifications of unauthorized absence, four specifications of absence from your appointed place

of duty and three specifications of disobeying a lawful order. Subsequently, your BCD that was adjudged by your SPCM was approved at all levels of review and, on 13 August 1981, you were discharged.

As part of the Board's review, a qualified mental health professional reviewed your request and provided the Board with an AO on 20 January 2022. The AO noted that there is no evidence you were diagnosed with a mental health condition during your military service. Unfortunately, you have provided no post-service medical evidence of PTSD or another unfitting mental health diagnosis. Although your record reflects that you were injured in a motor vehicle accident during your military service, there is insufficient evidence to establish a nexus with your misconduct. The AO concluded that additional information is required to render an alternate opinion, that there is insufficient evidence that you may have incurred PTSD or another unfitting mental health condition during military service, and that your misconduct could not 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 it was stated you were "AWOL" from a ship you were never onboard. You further state that you would like to establish care at the VA. Unfortunately, the Board, applying liberal consideration, relying on the AO, and noting you did not submit any documentation regarding your allegations, PTSD, or other mental health conditions, 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 a statement or supporting documentation describing post-service accomplishments, or advocacy letters. Based upon this review, the Board concluded that your potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined your misconduct as evidenced by your four NJPs and SPCM conviction, outweighed these mitigating factors. In making this finding, the Board concluded that your misconduct showed a complete disregard for military authority and regulations. The Board further concluded that the discharge was proper and equitable under standards of law and discipline and that the discharge accurately reflects your conduct during your period of service, which was terminated by your BCD. 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.

Sincerely, \_\_\_\_\_  
4/12/2022

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Executive Director

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