

## DEPARTMENT OF THE NAVY

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

> Docket No: 0147-22 Ref: Signature Date

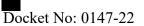


## Dear Petitioner:

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 13 April 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 3 March 2022, which was previously provided to you.

You enlisted in the Navy and began a period of active duty on 1 November 1977. On 11 October 1979, you received non-judicial punishment (NJP) for an unauthorized absence. On 14 January 1982, you were convicted by a special court-martial (SPCM) of three specifications of unauthorized absence totaling 608 days. As punishment, you were sentenced to confinement, forfeiture of pay, reduction in rank, and a bad conduct discharge (BCD). The BCD was subsequently approved at all levels of review, and on 24 June 1983, you were so discharged

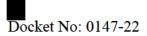


As part of the Board's review, a qualified mental health professional reviewed your request and provided the Board with an AO on 3 March 2022. The AO noted that there is no evidence you were diagnosed with a mental health condition during your military service and, throughout your disciplinary processing, there were no concerns raised of a mental health condition that would have warranted a referral for an evaluation. The AO further stated that you provided no post-service medical evidence in support of your claims and your statement is not sufficiently detailed to establish a nexus with your misconduct. As a result, the AO concluded that additional records are required to render an alternate opinion and stated there is insufficient evidence that you may have incurred a mental health condition during military service or that your misconduct could be attributed to a mental health condition.

The Board carefully reviewed your application, weighed all potentially mitigating factors, and considered your contentions that you were young and needed help and guidance on how to address the pressure from issues at home. You further state that you had an exemplary record for several years but that circumstances with your family affected your performance. Additionally, you argue that you attempted to work with your command, looking for a solution to your issues and help to relieve the stress that you were under, however, being an immature young man, in a sad state of mind, lacking any help or guidance, you caved into the pressure to make some poor decisions from the heart and returned home to assist your family. Unfortunately, the Board, applying liberal consideration, relying on the AO, and noting you did not submit any documentation regarding your mental health conditions, did not find evidence of an error or injustice that warrants upgrading your characterization of service or granting elemency 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 submission of supporting documentation, your statement and contentions as previously discussed and your desire to upgrade your discharge character of service. 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 NJP and SPCM conviction, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and concluded that your misconduct showed a complete disregard for military authority and regulations. In particular, the Board felt your UAs totaling well over 600 days was particularly egregious. As a result, the Board determined that your conduct was a significant departure from that expected of a Sailor and continues to warrant the 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.

