



**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: 237-22  
Ref: Signature Date

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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 1 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)/mental health condition (MHC) (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 16 March 2022, which was previously provided to you.

You entered active duty with the Navy on 26 March 1974. On 5 January 1975, you received non-judicial punishment (NJP) for wrongfully jumping overboard endangering your life and life of others. On 4 January 1975, you received a mental evaluation and was diagnosed with Adjustment Reaction Adolescence with Depression and Suicidal Attempts. You were also diagnosed with immature personality traits. On 3 February 1975, you were treated for a Barbiturate overdose, which resulted in the medical officer recommending you for administrative separation. On 14 February 1975, you received an additional NJP for failure to obey a lawful order and incapacitated for the performance of duty. On 6 March 1975, you received an evaluation from the Counseling and Assistance Center (CAAC), which recommended you receive regular urinalysis in order to monitor your continuance use of illegal drugs. Subsequently, you were notified of pending administrative separation action by reason of unsuitability. After you waiving your rights, your commanding officer (CO) forwarded your package to the separation authority (SA) recommending your discharge by reason of

unsuitability due to a character and behavior disorder, with a General (Under Honorable Conditions) characterization of service. The SA approved the CO's recommendation and on 7 May 1975, you were discharged with a General (Under Honorable Conditions) characterization of service.

As part of the Board's review, a qualified mental health professional reviewed your request and provided the Board with an AO on 16 March 2022. The mental health professional stated in pertinent part:

During military service, the Petitioner was diagnosed with an adjustment reaction and a substance use disorder. Post-service, the VA has determined service connection for PTSD. Unfortunately, his personal statement is lacking sufficient detail to establish a nexus with his misconduct, as he had problematic substance use prior to entry into military service. Additional records (e.g., post-service mental health 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 post-service evidence of a diagnosis of PTSD that may be attributed to military service. There is insufficient evidence that the Petitioner's in-service misconduct or the circumstances surrounding his separation could be attributed to PTSD."

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 and contention that the Department of Veterans Affairs (DVA) determined you were 70% disabled due to PTSD. For purposes of clemency consideration, the Board noted you did not provide supporting documentation describing post-service accomplishments, or advocacy letters.

Based upon this review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined your misconduct, as evidenced by your NJPs, outweighed the potential mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the negative impact it had on the good order and discipline of your command. In addition, the Board concurred with the AO that there is insufficient evidence that your in-service misconduct or the circumstances surrounding your separation could be attributed to PTSD. As a result, when weighing the seriousness of your misconduct against the brevity of your active duty service, the Board concluded that the preponderance of the evidence supports a finding that negative aspects of your service outweighed the positive aspects and continues to warrant a General (Under Honorable Conditions) 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.

Sincerely,

6/10/2022

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Executive Director

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