



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

█
Docket No: 0639-22

Ref: Signature date

█
Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to Title 10, United States Code, Section 1552. 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 17 October 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 the 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, 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 26 July 2022, which was previously provided to you. Although you were afforded an opportunity to submit an AO rebuttal, you chose not to do so.

You enlisted in the Navy and began a period of active duty on 18 August 1987. On 28 September 1988, you received nonjudicial punishment (NJP) for assault. On 3 March 1989, you were convicted by civil authorities after pleading guilty to the charge of wet reckless. You were sentenced to a three-year probation and a \$695.00 fine. On 1 December 1989, you received a second NJP for assault. On 13 April 1990, you were convicted by summary court martial (SCM) for being disrespectful in language towards a superior officer and derelict in your duties by missing three restricted musters. You were sentenced to reduction to the rank of E-1,

confinement, and forfeiture of pay. On 13 April 1990, you were notified of the initiation of administrative separation proceedings by reason of misconduct due to commission of a serious offense, pattern of misconduct, and civil conviction. On the same date, you decided to waive your procedural rights. On 22 May 1990, a medical officer determined that you were not dependent on alcohol and drugs but recommended your enrollment on the Level I Alcohol Abuse Prevention Training Program. On 30 May 1990, your commanding officer recommended an Other Than Honorable (OTH) discharge characterization of service by reason of misconduct due to commission of a serious offense, pattern of misconduct, and civil conviction. On 12 June 1990, the separation authority approved and ordered an OTH discharge characterization by reason of misconduct due to pattern of misconduct. On 23 June 1990, you were discharged.

On 16 April 2021, this Board denied your initial request for a discharge characterization upgrade.

The Board carefully considered all potentially mitigating factors to determine whether the interests of justice warrant relief in your case in accordance with the Kurta, Hagel, and Wilkie Memos. These included, but were not limited to, your desire for a discharge upgrade and contentions that your discharge was affected by an underlying mental health condition and Traumatic Brain Injury (TBI) and you were suffering from cognitive and anger issues which limited your ability to function. For purposes of clemency consideration, the Board noted you did not provide supporting documentation describing post-service accomplishments or advocacy letters.

As part of the Board's review, the Board considered the AO. The AO stated in pertinent part:

Petitioner's available in-service personnel and medical records did not contain a diagnosis of TBI or a mental health condition, or symptoms/behavioral changes indicative of TBI, residual symptoms of TBI, or other mental health conditions that may have impaired his occupational functioning or responsibility for his actions. He did not provide any additional in service or post-discharge clinical evidence indicating in-service mental health or TBI diagnoses or manifestation of symptoms indicative of these conditions.

The AO concluded, "it is my clinical opinion that there is insufficient objective evidence to support Petitioner's contention he incurred a TBI and Mental Health Condition attributable to military service. There is insufficient objective evidence to support Petitioner's contention his in-service misconduct could be attributed to TBI or a mental health condition."

Based upon this review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your NJPs and SCM, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and concluded it showed a complete disregard for military authority and regulations. Further, the Board noted the multiple assault charges and considered the likely negative effect your conduct had on the good order and discipline of your command. Finally, the Board concurred with the AO that there is insufficient evidence that your misconduct could be attributed to a mental health condition or TBI. As a result, the Board concluded your conduct constituted a significant departure from that expected

of a Sailor and continues to warrant an OTH characterization. Even in light of the Wilkie Memo and reviewing the record holistically, 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 that your request does not merit relief.

You are entitled to have the Board reconsider its decision upon the 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,

10/25/2022

