

DEPARTMENT OF THE NAVY

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

> Docket No: 0644-22 Ref: Signature Date

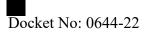


Dear Petitioner:

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 20 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 10 March 2022, which was previously provided to you.

You enlisted in the Navy and began a period of active duty on 26 December 1989. On 11 February 1993, you received non-judicial (NJP) for absence without leave and failure to obey an order or regulation. On 22 April 1993, you received your second NJP for absence without leave and wrongful use of a controlled substance. On 20 May 1993, you were notified that you were being recommended for administrative discharge from the Navy by reason of misconduct due to commission of a serious offense and misconduct due to drug incident. You were advised of, and waived your procedural rights to consult with military counsel and to present your case to an administrative discharge board (ADB). Your commanding officer (CO) then forwarded your administrative separation package to the separation authority (SA) recommending your



administrative discharge from the Navy with an Other Than Honorable (OTH) characterization of service. The SA approved the CO's recommendation and directed your OTH discharge from the Navy by reason of misconduct due to commission of a serious offense, and on 8 July 1993, you were so discharged.

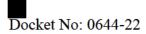
As part of the Board's review, a qualified mental health professional reviewed your request and provided the Board with an AO on 10 March 2022. The AO noted in pertinent part:

In service, the Petitioner was diagnosed with substance abuse, but not dependence. Throughout his disciplinary processing, there were no concerns raised of another mental health condition that would have warranted a referral for evaluation. Unfortunately, he has provided no post-service medical evidence in support of his claims. His personal statement is not sufficiently detailed to support his contention of PTSD or establish a nexus with his misconduct. 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 insufficient evidence that he may have incurred PTSD during military service. There is insufficient evidence that his misconduct could be attributed to PTSD."

The Board carefully reviewed your application, weighed all potentially mitigating factors, and considered your statement that you are having anxiety, sleeping problems, and PTSD. You further assert that you would like to be eligible for benefits. Unfortunately, the Board, applying liberal consideration, relying on the AO, and noting you did not submit any documentation regarding your PTSD or other mental health condition, 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 statement 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 supporting documentation describing post-service accomplishments, or advocacy letters. 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 two NJPs, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact it included a drug offense. Additionally, absent a material error or injustice, the Board declined to summarily upgrade a discharge solely for the purpose of facilitating Department of Veterans Affairs benefits, or enhancing educational or employment opportunities. Ultimately, the Board determined your conduct showed a complete disregard for military authority and regulations. As a result, the Board concluded your conduct was a significant departure from that expected from a Sailor and continues to warrant an OTH characterization. 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.

