



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

█  
Docket No: 0827-22  
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 Board waived the statute of limitation 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 22 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 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, 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 the advisory opinion (AO) furnished by a qualified mental health provider which was previously provided to you. You were afforded an opportunity to submit a rebuttal to the AO, but did not.

You enlisted in the Navy began a period of active service on 21 January 1998, receiving honorable discharges and reenlisting in 2004 and again on 29 August 2008. In 2012, you were the subject of investigation into allegations of sexual harassment against a subordinate enlisted Sailor and allegations that on three occasions, through pretense and premeditation, you administered intravenous Phenergan to render another Sailor unconscious to perform sexual acts upon your victim. You were tried before a General-Court Martial (GCM) on 25 October 2012 for: three specifications of violation of Article 120, to include aggravated sexual contact, wrongful sexual contact, and abusive sexual contact; Article 93, maltreatment, for unwanted

sexual advances toward your subordinate; and two specifications of violation of Article 92, for violation of lawful general orders prohibiting sexual harassment and fraternization. You plead guilty pursuant to a pre-trial agreement which suspended adjudged confinement in excess of 7 years. You were sentenced to a Dishonorable Discharge, reduction from E-7 to E-1, and 14 years of confinement. The findings and sentence from your trial were affirmed upon appellate review, and you were dishonorably discharged on 19 September 2014. Your period of continuous honorable service from 21 January 1998 through 25 October 2012 was entered in the Block 19 remarks of your Certificate of Discharge or Release from Active Duty (DD Form 214).

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. The Board carefully weighed all potentially mitigating factors to include, but not limited to, your desire to upgrade your discharge based on your overall quality of service prior to misconduct, such as your service as a combat medic with Fleet Marine Forces in Kosovo, and your mental health issues for which you submitted evidence of preliminary diagnoses by the Department of Veterans Affairs. The Board also considered your contention that you were confined 16 months past your release date. Because you contend that a mental health condition contributed to your misconduct and discharge, the Board also considered the AO. The AO noted in pertinent part:

Petitioner's OMPF did not contain evidence of a diagnosis of a mental health condition or reported psychological symptoms/behavioral changes indicative of a diagnosable unfitting mental health condition. Unfortunately, Petitioner did not provide clarifying information about the trauma related to his PTSD (i.e., when the trauma occurred, symptoms experienced). The lack of clarifying information made available did not provide enough markers to establish an onset and development of mental health symptoms or identify a nexus with his misconduct. Should the Petitioner choose to submit additional clarifying information, it will be reviewed in context of his claims.

The AO concluded, "[B]ased on the available evidence, it is my considered clinical opinion the preponderance of available objective evidence failed to establish Petitioner suffered from a mental health condition at the time of his military service or his in-service misconduct could be mitigated by a mental health condition."

The Board concurred with the opinion of the AO and also noted the lack of evidence of symptoms or behaviors of a mental health condition in your service record. The Board further considered that your serious premeditated misconduct, evidenced by your conviction of three specifications of Article 120 for aggravated, abusive, and wrongful sexual contact with a victim whom you intentionally rendered unconscious, is not the type which would typically be mitigated by a mental health condition. As a result, 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. The Board concluded the evidence you submitted was insufficient to outweigh your misconduct based on the seriousness of your misconduct and that your characterization of service remains appropriate. Accordingly, 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 is attached 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,

5/5/2022

