

## **DEPARTMENT OF THE NAVY**

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

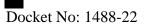
> Docket No: 1488-22 Ref: Signature Date

## 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 15 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) (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 19 April 2022, which was previously provided to you. Although you were afforded an opportunity to submit an AO rebuttal, you did not do so.

You enlisted in the Navy and began a period of active duty on 14 July 1992. On 30 December 1993, you received non-judicial punishment (NJP) for eight specifications of unauthorized absence (UA) totaling 20 days and dereliction of duty. On 24 February 1994, you received your second NJP for UA totaling three days. Additionally, you were issued an administrative remarks counseling concerning deficiencies in your performance and conduct. You were advised that any further deficiencies in your performance and/or conduct may result in disciplinary action and in processing for administrative separation. On 30 March 1994, you received your third NJP for UA totaling three days. Subsequently, 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 pattern of misconduct. 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 Marine Corps with an Other Than Honorable (OTH) characterization of service. Prior to the SA's decision, on 6 April 1994, you received your fourth NJP for six specifications of UA. Subsequently, the SA approved and directed your OTH discharge from the Navy. On 22 April 1994, you were discharged from the Navy with an OTH characterization of service by reason of misconduct due to pattern of misconduct.

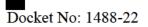
As part of the Board's review, a qualified mental health professional reviewed your request and provided the Board with an AO on 19 April 2022. The AO noted in pertinent part:

Among available records, there is no evidence of a mental health diagnosis in military service. Post-service, civilian providers have diagnosed him with PTSD attributed in part to trauma incurred during military service. Other post-service mental health diagnoses are temporally remote from military service, and there is no evidence that they could be attributed to military service. His report of military trauma is inconsistent with his service record, as he was discharged in April 1994 but reported the fatal car accident occurred in May 1994, which makes it difficult to consider that he is a reliable historian. While UA could be related to PTSD avoidance symptoms, his personal statement and medical records are lacking sufficient detail to establish a nexus with his misconduct. Additional records (e.g., service medical records describing the Petitioner's diagnosis and symptoms in service, or records detailing 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 some post-service evidence of a diagnosis of PTSD that may be attributed to military service. There is insufficient evidence of another mental health condition that could be attributed to military service. There is insufficient evidence that his misconduct could be attributed to PTSD or another mental health condition."

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 supporting documentation and your desire to upgrade your discharge character of service. The Board also considered your contentions that you incurred PTSD from a personal assault and witnessing the death of other service members while you were on active duty and that you feel that these events affected your mental health, which resulted in your discharge. 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 four NJPs, outweighed these mitigating factors. In making this finding, the



Board considered the seriousness of your misconduct and concluded your record of misconduct showed a complete disregard for military authority and regulations. The Board also considered the negative impact your conduct likely had on the good order and discipline of your command. Finally, the Board concurred with the AO and determined that there is insufficient evidence that your misconduct could be attributed to PTSD or another mental health condition. As a result, the Board determined your conduct constituted a significant departure from that expected of a Sailor and continues to warrant an OTH characterization. After applying liberal consideration, 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 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,		
	7/5/2	2022
Executive Director		
Signed by:		