

## DEPARTMENT OF THE NAVY

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

> Docket No: 1575-22 Ref: Signature Date

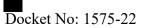


## Dear Petitioner:

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 29 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 2 May 2022, which was previously provided to you. Although you were afforded an opportunity to submit an AO rebuttal, you did not do so.

The Board determined that your personal appearance, with or without counsel, would not materially add to their understanding of the issues involved. Therefore, the Board determined that a personal appearance was not necessary and considered your case based on the evidence of record.

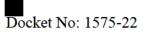


You enlisted in the Navy and began a period of active duty on 28 January 1981. You subsequently completed this period of active duty, on 16 May 1981, with an Honorable characterization of service. You commenced a second period of active duty on 20 September 1982 and also completed this period honorably, on 19 August 1984, and immediately reenlisted. On 6 November 1984, you received non-judicial punishment (NJP) for wrongful use of phoncyhclide (PCP) and larceny. Subsequently, you were notified that you were being recommended for administrative discharge from the Navy by reason of misconduct due to drug abuse, at which time you elected your procedural right to consult with military counsel and to present your case to an administrative discharge board (ADB). On 14 March 1985, an ADB was convened and determined that the preponderance of the evidence supported a finding of misconduct and recommended that you be separated from the Navy with an Other Than Honorable (OTH) characterization of service. The commanding officer then forwarded your administrative separation package to the separation authority (SA) concurring with the ADB's recommendation. The SA approved and directed your administrative discharge from the Navy with an OTH characterization of service. On 18 July 1985, you were discharged from the Navy with an OTH characterization of service by reason of misconduct due to drug abuse.

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 character of service and assertion that while stationed onboard the you experienced the bombing of the Marine Barracks and Embassy in some of your fellow shipmates were Marines that were transported over to and some never returned. You further state that, after this experience, you never have been the same. Additionally, you contend that you have never been in any trouble and you were a hard working Sailor with good evaluations. 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, a qualified mental health professional reviewed your request and provided the Board with an AO on 2 May 2022. The AO noted in pertinent part:

There is no evidence that he was diagnosed with a mental health condition in military service. Throughout his disciplinary processing, there were no concerns raised of a mental health condition that would have warranted a referral for evaluation, although substance use was noted. Substance use is incompatible with military readiness and discipline and considered amenable to treatment, depending on the individual's willingness to engage in treatment. There is no evidence that the Petitioner was not aware of the potential for misconduct when he used substances or was not responsible for his behavior. Additionally, it is difficult to attribute larceny to a mental health condition. Unfortunately, the Petitioner has provided no medical records in support of his claims. His personal statement is not sufficiently detailed to establish a clinical diagnosis or provide a nexus with his misconduct. Additional records (e.g., mental health records describing the Petitioner's diagnosis, symptoms, and their specific link to his misconduct) would aid in rendering an alternate opinion.



The AO concluded, "[b]ased on the available evidence, it is my clinical opinion that there is insufficient evidence of a diagnosis of PTSD that may be attributed to military service. There is insufficient evidence that his misconduct may be attributed to PTSD."

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 NJP, 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, the Board concurred with the AO that there is insufficient evidence of a diagnosis of PTSD that may be attributed to military service, and there is insufficient evidence that your misconduct may be attributed to PTSD. When weighing the evidence, the Board concluded your conduct was a significant departure from that expected from a Sailor and still warrants OTH characterization of service. Despite your prior periods of Honorable service, 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.

