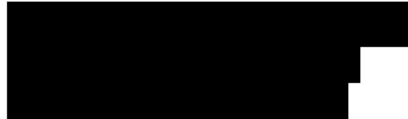




**DEPARTMENT OF THE NAVY**  
BOARD FOR CORRECTION OF NAVAL RECORDS  
701 S. COURTHOUSE ROAD, SUITE 1001  
ARLINGTON, VA 22204-2490

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Docket No: 1583-22  
0222-17  
4301-14  
10033-11  
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.

Because your application was submitted with new evidence not previously considered, the Board found it in the interest of justice to review your application. A three-member panel of the Board, sitting in executive session, considered your application on 6 July 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 25 August 2017 guidance from the Office of the Under Secretary of Defense for Personnel and Readiness (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 3 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 previously applied to this Board for an upgrade to your characterization of service and were denied on 26 June 2012. Subsequently, you submitted two additional applications, and after a review of those applications, it was determined that they did not contain any new material evidence that was not previously considered by the Board and, therefore, administratively closed.

You enlisted in the Navy and began a period of active duty on 23 May 1983. On 16 April 1986, you received non-judicial punishment (NJP) for unauthorized absence (UA) totaling 48 days. On 18 February 1987, you were convicted by a special court-martial (SPCM) of UA totaling 245 days. As punishment, you were sentenced to confinement, reduction in rank, forfeiture of pay, and a Bad Conduct Discharge (BCD). The BCD was subsequently approved at all levels of review and, on 12 November 1987, you were discharged.

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, your desire to upgrade your discharge character of service, and contentions that your lawyer lied to you by stating to you that your discharge was going to be upgraded, that you were concerned about your family members, that you felt you were under a lot of pressure and decided not to return to the Navy from your leave period, and that you were young and did not know how to handle everything at that time. For purposes of clemency consideration, the Board noted you provided supporting documentation describing post-service accomplishments and 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 3 May 2022. The AO stated 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. Unfortunately, the Petitioner has provided no medical records in support of his claims. The statements available in the record are 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 mental health condition that may be attributed to military service. There is insufficient evidence that his misconduct may be attributed to a mental health condition."

Based upon this review, the Board concluded that your potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined your misconduct as evidenced by your NJP and SPCM conviction, outweighed these mitigating factors. In making this finding,

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the Board considered the seriousness of your misconduct and concluded that your misconduct showed a complete disregard for military authority and regulations. In particular, the Board felt your extended period of UA that resulted in your SPCM conviction was an egregious violation of your contractual obligation to the Navy. The Board further concluded that the discharge was proper and equitable under standards of law and discipline and that the discharge accurately reflects your conduct during your period of service, which was terminated by your BCD. Additionally, the Board was not persuaded by your arguments and noted you did not provide any evidence to support your arguments. Finally, the Board concurred with the AO and determined that there is insufficient evidence of a mental health condition that may be attributed to military service, and there is insufficient evidence that your misconduct may be attributed to a 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 a BCD characterization. The Board considered the additional evidence you submitted regarding post-discharge character but concluded that the favorable matters you submitted for consideration were also insufficient to outweigh the severity and nature of your misconduct. 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,

7/22/2022

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Executive Director

Signed by: █