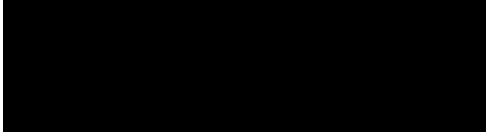




DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
701 S. COURTHOUSE ROAD, SUITE 1001
ARLINGTON, VA 22204-2490

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Docket No: 1747-22
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 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 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 23 May 2022 and your response to the AO.

You enlisted in the Navy and began a period of active duty on 2 March 1992. On 24 July 1992, you received non-judicial punishment (NJP) for failure to obey a lawful written order, failure to obey a lawful order from a noncommissioned officer, assault, wrongfully interfering with a sentinel performing his duties, and communicating a threat. Additionally, you were issued administrative remarks (Page 13) counseling concerning deficiencies in your performance and conduct, and advised that any further deficiencies in your performance and/or conduct may result in disciplinary action, and in processing for administrative separation. On 9 December 1992, you were convicted by a special court-martial (SPCM) of two specifications of unauthorized absence (UA) totaling eight days and two specifications of wrongful use of cocaine. As

punishment, you were sentenced to confinement a Bad Conduct Discharge (BCD). The BCD was subsequently approved at all levels of review and, on 2 November 1993, you were so 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 assertion that “it could not have been all bad” since you received the National Defense Service Medal. 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 23 May 2022. The AO stated in pertinent part:

There is no evidence that the Petitioner was diagnosed with a PTSD or another mental health condition during military service. Unfortunately, he has provided no medical evidence to support his claims of PTSD or another mental health condition incurred in or exacerbated by military service. Additional records (e.g., post-service 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 or another mental health condition that may be attributed to military service. There is insufficient evidence that his misconduct may be attributed to PTSD or another mental health condition.”

In response to the AO, you argued that you received disability benefits from the Social Security Administration (SSA) for over 15 years prior to your incarceration. You assert that your medical records show that you suffer from 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, the Board considered the seriousness of your misconduct and the fact it included a drug offense. 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. Finally, the Board concurred with the AO and determined there is insufficient evidence of a diagnosis of PTSD or another mental health condition that may be attributed to military service, and there is insufficient evidence that your misconduct may be attributed to PTSD or another mental health condition. The Board is not an investigative agency and relies on the available records to adjudicate cases. Therefore, the Board was unable to obtain any records from the SSA to verify your assertions of an ongoing 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. 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,

7/20/2022

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