



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

█
Docket No: 1884-22
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 limitations 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 20 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 SECDEF Memo of 3 September 2014 (Hagel Memo), USD Memo of 25 August 2017 (Kurta Memo), and USD Memo of 25 July 2018 (Wilkie Memo). The Board also considered an advisory opinion (AO) from a qualified mental health professional dated 23 May 2022. Although you were provided an opportunity to comment on the AO, 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 entered active duty with the Navy on 4 August 1980. During the period from 3 July 1981 to 12 October 1982, you received three non-judicial punishments (NJP) for misconduct that included possession of marijuana, disobeying a lawful order by missing 14 restricted musters, unauthorized absence (UA) for five hours, and missing ship's movement. Subsequently, you were notified of pending administrative separation action by reason of minor military infractions. After waiving your rights, your commanding officer (CO) forwarded your package to the separation authority

(SA) recommending your discharge by reason of misconduct due to minor military infractions with a General (Under Honorable Conditions) characterization of service. The SA approved the CO's recommendation and, on 4 April 1983, 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 desire to upgrade your discharge and contentions that you incurred a mental health condition during military service after being shot, which your mental health condition contributed to your misconduct, and you are currently being seen for depression. 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 mental health condition during military service. Unfortunately, he has provided no medical evidence to support his claims of a 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 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 these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined your misconduct as evidenced by your three NJPs, outweighed the potential mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact it included a drug offense. Further, the Board noted your conduct related to missing restricted musters and concluded it showed a complete disregard for military authority and regulations. Further, the Board found no information in your record, and you provided none to support your contention, of being shot while serving in the Navy. Finally, the Board concurred with the AO that there is insufficient evidence that your misconduct could be attributed to a mental health condition. As a result, the Board concluded significant negative aspects of your service outweighed the positive aspects and continue to warrant a General (Under Honorable Conditions) 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

