

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

> Docket No: 2012-22 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 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 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 June 2022 and your response to the AO.

You enlisted in the Navy and began a period of active duty on 16 July 1985. On 3 July 1986, you received non-judicial punishment (NJP) for unauthorized absence (UA) and failure to obey an order. On 28 August 1986, you received your second NJP for four specifications of UA, failure to go to your appointed place of duty, and failure to obey a lawful order. Additionally, you were issued an administrative remarks (Page 13) 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 from the naval service. On 23 October 1986, you received your third NJP for two specifications of UA. On 26 February 1987, you received your fourth NJP for two specifications of assault. On 17 March 1987, a competent medical physician examined you and determined that you were physiologically dependent on alcohol/drugs, and recommended that you receive outpatient counseling. 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 Navy with an Other Than Honorable (OTH) characterization of service. The SA approved the recommendation for administrative discharge and directed your OTH discharge from the Navy. Prior to your administrative discharge, you were hospitalized, evaluated, and received treatment for a diagnosed medical condition. Subsequently, a medical board determined that you were physically fit to be released from active duty. On 14 May 1987, you were discharged from the Navy with an OTH characterization of service by reason of misconduct due to pattern of misconduct.

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 contentions that: (1) you received unfair treatment that resulted in your administrative separation; (2) you incurred PTSD due to sexual harassment you received from a fellow Sailor; (3) you constantly made complaints about the sexual harassment you were receiving, but no one assisted you with your complaints; (4) you did not receive mental health treatment for your symptoms of PTSD or alcohol use disorder that subsequently developed, and (5) you was young and intimated by your superiors, and was coerced into signing separation papers instead of receiving proper medical and behavior treatment. For purposes of clemency consideration, the Board noted you provided advocacy letters; however, you did not provide other supporting documentation describing post-service accomplishments.

As part of the Board's review, a qualified mental health professional reviewed your request and provided the Board with an AO on 2 June 2022. The AO noted in pertinent part:

There is no evidence that he was diagnosed with a mental health condition other than alcohol use disorder during military service. Problematic alcohol use is incompatible with military readiness and discipline and considered amenable to treatment, depending on the individual's willingness to engage in treatment; and there is no evidence he was unaware of his misconduct or not responsible for his behavior. Throughout his disciplinary actions, counselings, and administrative processing, there were no concerns noted which would have warranted referral to mental health resources, other than outpatient counseling for alcohol use disorder. Although he claimed PTSD, he did not provide a timeline of his purported trauma, describe symptoms which would meet the criteria for PTSD, or indicate how those symptoms interfered with his ability to function. Unfortunately, the dearth information made it difficult to establish an onset and development of mental health symptoms or identify a nexus with his in-service misconduct. 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 that may be attributed to military service. There is insufficient evidence that his misconduct could be attributed to PTSD."

In response to the AO, you provided new supporting documentation that supplied additional clarification of the circumstances of your case and reiterated your arguments of mitigation.

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 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. While the Board considered your contention that your administrative processing was unfair and coerced, the Board found no evidence and you provided none to substantiate your contention. Therefore, the Board relied upon the presumption of regularity that your administrative separation process was conducted properly in accordance with applicable regulations. Further, the Board found no evidence that supports your contention of sexual harassment, unfair treatment, or discrimination. Regarding your arguments involving your diagnosed medical condition, the Board noted you were appropriately discharged based on your misconduct. As explained in the SA discharge authorization of 4 May 1987, applicable disability regulations in effect at the time directed misconduct based administrative separation processing to supersede disability processing. Finally, 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 could be attributed to PTSD. 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. While the Board commends your post-discharge good conduct, 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,