

DEPARTMENT OF THE NAVY

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

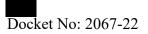
> Docket No: 2067-22 Ref: Signature Date

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 13 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)/mental health condition (MHC) (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 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.

You entered active duty with the Navy on 1 January 1981. During the period from 15 June 1981 to 8 July 1981, you received two non-judicial punishments (NJP) for two specifications of unauthorized absence (UA) totaling three days. During the period from 24 August 1983 to 2 November 1983, you received two additional NJPs for two specifications of UA totaling three days, two specifications of failure to go at time prescribed to appointed place of duty, two specifications of disobeying a lawful order, having a guest in the barracks after hours, and absence from appointed place of duty. Subsequently, you were notified of pending administrative separation action by reason of frequent involvement. 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 frequent involvement with an Other Than Honorable (OTH) characterization of service. The SA approved the recommendation and, on 22 November 1983, you were so discharged.

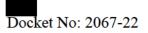
The Board carefully considered all potentially mitigating factors to determine whether the interests of justice warrant relief in your case in accordance with the Wilkie Memo. These included, but were not limited to your desire to upgrade your discharge and contention that you incurred a mental health condition (MHC) during military service due to personal stressors resulting from the departure of your wife and children. 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:

During military service, he was evaluated on several occasions but not diagnosed with a mental health condition. Problematic personality traits were observed and situational anxiety was noted, but no formal diagnosis was assigned. This absence of formal diagnosis was based on observed behaviors and performance during his period of service, the information he chose to disclose to the mental health clinician, and the psychological evaluation performed by the mental health clinician. He has provided no medical evidence in support of his claims. Unfortunately, his statement is not sufficiently detailed to establish a clinical diagnosis or nexus with his misconduct. Additional records (e.g., post-service mental health records describing the Petitioner's diagnosis, symptoms, and their specific self-medication role) 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 could be attributed to military service. There is insufficient evidence that his misconduct could be attributed to 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 four NJPs, outweighed the potential mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the negative impact it likely had on the good order and discipline of your command. Additionally, the Board concurred with the AO that there is insufficient evidence that your misconduct could be attributed to a mental health condition. Further, the Board noted that there is no evidence in your record, and you submitted none, to support your contentions. As a result, the Board concluded your conduct was a significant departure from that expected from a Sailor and your OTH discharge remains appropriate. After applying liberal consideration, the Board did not find evidence of an error or injustice that warrants upgrading your characterization of service or granting elemency 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
Executive Director	
Signed by:	