

DEPARTMENT OF THE NAVY

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

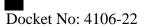
> Docket No: 4106-22 Ref: Signature Date

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 21 September 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, which was previously provided to you. Although you were afforded an opportunity to submit an AO rebuttal, you chose not to do so.

You enlisted in the Navy and began a period of active duty on 20 September 2004. Unfortunately, the documents pertinent to your administrative separation are not in your official military personnel file (OMPF). Notwithstanding, the Board relies on a presumption of regularity to support the official actions of public officers and, in the absence of substantial evidence to the contrary, will presume that they have properly discharged their official duties. Based on the information contained on your Certificate of Release or Discharge from Active Duty (DD Form 214), you were separated from the Navy on 23 April 2007, with a "General (Under Honorable Conditions)" characterization of service, your narrative reason for separation



is "Misconduct Due to Pattern of Misconduct," your separation code is "JKA," and your reenlistment code is "RE-4."

Post-discharge, you petitioned the Naval Discharge Review Board (NDRB) for an upgrade to your characterization of service. The NDRB denied your request, on 23 August 2011, after determining your discharge was proper as issued.

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 assertion that the Department of Veterans Affairs (VA) confirmed that you have a service-connected disability for post-traumatic stress disorder (PTSD). 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 18 July 2022. The AO noted in pertinent part:

There is no evidence Petitioner was diagnosed with a mental health condition during his service. Petitioner did provide documentation of a post-service PTSD diagnosis for which he is service connected. Unfortunately, Petitioner did not provide clarifying information about the trauma related to his PTSD (i.e., when the traumas occurred, symptoms experienced, symptom onset). The lack of clarifying information made available did not provide enough markers to establish an onset and development of mental health symptoms.

The AO concluded, "it is my considered clinical opinion, there is post-discharge evidence of PTSD that can be attributed to military service. There is insufficient evidence the circumstances surrounding his separation could be attributed to PTSD."

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 pattern of misconduct discharge, outweighed these mitigating factors. In making this finding, the Board considered the negative impact your performance and conduct likely had on the good order and discipline of your command. Additionally, the Board concurred with the AO and determined that while there is post-discharge evidence of PTSD that can be attributed to military service, there is insufficient evidence the circumstances surrounding your separation could be attributed to PTSD. As pointed out in the AO, the lack of clarifying information made available did not provide enough markers to establish an onset and development of mental health symptoms. As a result, the Board determined significant negative aspects of your service outweigh the positive aspects and continues to warrant a General (Under Honorable Conditions) characterization. While the Board empathized with your current medical condition, 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.

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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.

