





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



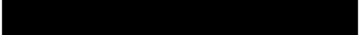

Docket No. 4802-22
Ref: Signature Date



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 23 May 2023. The names and votes of the members of the panel 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, 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). In addition, the Board considered the 6 March 2023 Advisory Opinion (AO) from a Licensed Clinical Psychologist. Although you were provided an opportunity to respond to the AO, you chose not to do so.

A review of your record shows that you entered active duty Navy service on 23 August 1989. On 10 November 1990, you were formally counseled for two specifications of disobeying a lawful order. On 4 December 1991, you accepted non-judicial punishment (NJP) imposed by your Commanding Officer (CO) for violating Article 128, of the Uniform Code of Military Justice (UCMJ), assault. You were marked for unauthorized absence (UA) from 20 to 23 September 1993 and missed movement of  on 21 September 1993. You went UA a second time from 1 May 1994 to 3 May 1994. On 9 May 1994, the 
 medical department evaluated and diagnosed you with alcohol

dependence. On 13 May 1994, you again went UA, missed movement on 20 May 1994, and returned on 20 June 1994. On 20 July 1994, you were evaluated and found fit for confinement. Although part of your record pertaining to your trial by court martial is illegible; it seems you convicted by a summary court martial (SCM) for UA, missing movement, provoking speech and assault on 27 August 1994. As a result, your CO notified you that you were being considered for an administrative discharge by reason of pattern of misconduct. Ultimately, you were subsequently discharged from the Navy, on 19 September 1994, with an Other Than Honorable (OTH) characterization of service.

The Board carefully considered all potentially mitigating factors to determine whether the interests of justice warrant relief in your case in accordance with the Kurta, Hagel, and Wilkie Memos. These included, but were not limited to, your desire for a discharge upgrade and contentions that you were suffering from a mental health condition that was related to your misconduct. For purposes of clemency and equity consideration, the Board noted you did not provide documentation describing post-service accomplishments or advocacy letters.

Based on your assertions that you incurred a mental health condition during your military service, which might have mitigated your discharge character of service, a qualified mental health professional reviewed your request for correction to your record and provided the Board with an AO. The AO stated in pertinent part:

Petitioner was appropriately referred for psychological evaluation during his enlistment and properly evaluated. His alcohol use disorder diagnosis was based on observed behaviors and performance during his period of service, the information he chose to disclose, and the psychological evaluation performed. Problematic alcohol use is incompatible with military readiness and discipline and does not remove responsibility for behavior. He has submitted no medical evidence to support his claims. His in-service misconduct appears to be consistent with his alcohol use disorder, rather than evidence of PTSD or another mental health condition incurred in or exacerbated by military service.

The AO concluded, “it is my clinical opinion 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 to attribute his misconduct to PTSD or another mental health condition.”

After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your NJP and SCM, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and found that your conduct showed a complete disregard for military authority and regulations. Further, the Board concurred with the AO that there was no evidence of a mental health condition in-service and you provided no evidence of a mental health diagnosis in-service or post-service. Moreover, the Board found significant evidence in your record that your alcohol use disorder contributed to your misconduct. Thus, the Board determined that there is no evidence that your misconduct could be attributed to a mental health condition. As a result, the Board concluded your conduct constituted a significant departure from that expected of a service member and continues to warrant an OTH

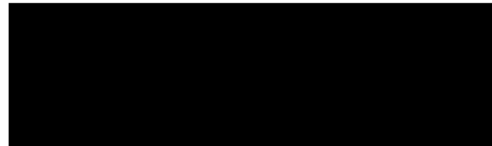
characterization. Even in light of the Wilkie Memo and reviewing the record liberally and holistically, the Board did not find evidence of an error or injustice that warrants granting you the relief you requested or granting relief as a matter of clemency or equity.

Regarding your request for a disability discharge, the Board found no evidence that you suffered from an unfitting conditions while on active duty. Contrary to your assertion, the Board noted that you were discharged for misconduct and found no evidence to support a finding that you were unfit for continued naval service due to a mental health condition. Specifically, the Board found that you were notified, in writing, that you were being processed for misconduct and you acknowledged, in writing, the basis for your discharge processing. Additionally, the Board concurred with the AO that there is insufficient evidence of a diagnosis of PTSD or another mental health condition that may be attributed to your military service. Regardless, even if evidence of unfitness existed, the Board determined you were ineligible for disability processing since service regulations directed misconduct processing to supersede disability processing. Accordingly, given the totality of the circumstances, the Board determined that 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,

6/9/2023

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Signed by: 