



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

■  
Docket No: 4949-22

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 16 November 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 29 August 1989. On 14 July 1990, you received non-judicial punishment (NJP) for failure to go to your appointed place of duty and failure to obey a lawful written order. On 2 November 1990, you were diagnosed with an alcohol dependence and recommended for inpatient treatment. On 9 January 1991, a military psychiatrist diagnosed you with alcohol abuse, not dependent and passive-aggressive personality traits. On or about April 1991, you received your second NJP; the specifics of the charges and

specifications are not legible in your record. On or about April 1991, you were convicted by a special court-martial (SPCM); again, the specifics of the charges, specifications and punishment as adjudged are not legible in your record. 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 30 September 1992, with a “Bad Conduct Discharge (BCD)” characterization of service, your narrative reason for separation is “Conviction By Special Court Martial” your separation code is “JJD-901,” and your reenlistment code is “RE-4.”

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 to change your discharge character of service and contention that you incurred depression while deployed onboard your ship, which contributed to your misconduct. You also assert that your time spent on onboard your ship led to depression and fear of losing your life, you began having fights as an outlet to your depression, you were “young, an innocent young black man” and only tried to defend yourself, you could not digest the “bad treatment” and your reactions were of a young man that did not handle things well at the time, you felt like an “animal locked in a cage” onboard your ship, and being locked down was a key factor to your bad behavior. For purposes of clemency and equity consideration, the Board noted you provided advocacy letters but no 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 23 September 2022. The AO stated in pertinent part:

During military service, the Petitioner was diagnosed with an alcohol use disorder. 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. While it is possible that his misconduct could be attributed to effects of excessive alcohol consumption, when evaluated during military service, he demonstrated an awareness of the potential for misconduct when he began to drink and was deemed responsible for his behavior. He has provided no post-service evidence of a diagnosis of PTSD or another mental health condition. Unfortunately, his personal statement is not sufficiently detailed to establish clinical symptoms or a nexus with his misconduct, as his previous statements indicate his UA was due to personal stressors. Additional records (e.g., mental health records describing the Petitioner’s diagnosis, symptoms, and their specific link to his misconduct) would aid in rendering an alternate opinion.

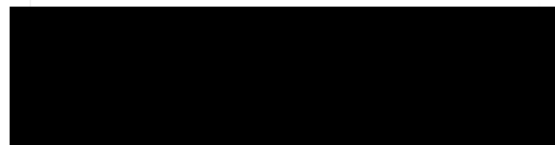
The AO concluded, “it is my considered clinical opinion there is insufficient evidence of a diagnosis of PTSD or another mental health condition that may be attributed to military service. There is insufficient evidence his misconduct could be attributed to PTSD or another mental health condition.”

After thorough review, the Board concluded your potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined your misconduct as evidenced by your two NJPs and SPCM conviction, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and concluded that it showed a complete disregard of military authority and regulations. Further, the Board concurred with the AO and determined that there is insufficient evidence of a diagnosis of PTSD or another mental health condition that may be attributed to military service, and there is insufficient evidence your misconduct could be attributed to PTSD or another mental health condition. As a result, the Board concluded that your discharge was proper and equitable under standards of law and discipline and that the discharge accurately reflects your conduct during your period of service, which was terminated by your BCD. Ultimately, the Board decided your conduct constituted a significant departure from that expected of a Sailor and continues to warrant a BCD. While the Board commends your post-discharge good character, even in light of the Wilkie Memo and reviewing the record holistically, the Board did not find evidence of an error or injustice that warrants upgrading your characterization of service or granting an upgraded characterization of service as a matter of clemency or equity. 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,

12/4/2022



Executive Director

Signed by: █