



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

██████████  
Docket No: 5767-22  
Ref: Signature Date

██  
██  
██

Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to Title 10, United States Code, Section 1552. 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 Board waived the statute of limitation 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 18 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 the 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 to 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) of a qualified mental health provider, which was previously provided to you. Although you were afforded an opportunity to submit a rebuttal, you chose not to do so.

The Board determined that your personal appearance, with or without counsel, would not materially add to the understanding of the issues involved. Therefore, the Board determined a personal appearance was not necessary and considered your case based on evidence of record.

You enlisted in the Navy and began a period of active duty on 9 August 2005. Within your first week of service, you received administrative counseling for numerous negative entries in your recruit personnel data record due to failure to adapt, failure to obey rules and regulations, substandard performance, and overall lack of military bearing. However, you served from that point for over 3 years without incident until receiving nonjudicial punishment (NJP) for multiple

violations, to include Article 134 for drunk and disorderly conduct, Article 112 for being drunk while on duty, Article 92 for failure to obey orders of armed forces police officers to sit down and be quiet, and Article 117 for wrongful use of provoking words toward armed forces police officers. As a result, you were issued administrative counseling warning you that future misconduct could result in administrative separation under adverse circumstances. However, you received a second NJP that same month for a violation of Article 86 due to your unauthorized absence. Your final NJP, on 16 April 2009, reflected a consistent pattern of alcohol related misconduct to include violations of Article 92 for failure to obey an order or regulation by consuming alcohol while in a duty status, Article 112 for being drunk on duty as the oncoming Duty Driver, and Article 107 for a false official statement regarding prior coordination for reporting to duty. As a result, you were notified of processing for administrative separation for the reasons of misconduct due to commission of a serious offense, pattern of misconduct, and for alcohol rehabilitation failure. Because notification procedures were used, the least favorable characterization of service you faced was General (Under Honorable Conditions) rather than Other than Honorable, which permitted approval of your separation by local authority. Therefore, you were discharged with a General (Under Honorable Conditions) on 27 May 2009.

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 upgrade your discharge and your contentions that: (1) you experienced multiple traumas during your second deployment following your cousin's murder and the deaths of your aunt, grandfather, and great-grandfather, which you state left you unable to adapt to normal life after the deployment because you were not afforded leave, assistance with coping, or time to mourn, (2) the legal officer improperly changed the marks on your performance evaluation to result in a lower discharge characterization, and (3) your post-traumatic stress disorder (PTSD), diagnosed post-discharge, caused many of the issues during your military service that led to your discharge. For purposes of clemency and equity consideration, the Board noted you provided supporting documentation describing post-service accomplishments and advocacy letters.

Because you contend that PTSD affected your discharge, the Board also considered the AO dated 3 October 2022. The AO stated in pertinent part:

There is no evidence that the Petitioner was diagnosed with any mental health condition (to include PTSD) in military service, or that he exhibited any psychological symptoms or behavioral changes indicative of a diagnosable mental health condition other than alcohol abuse. Unfortunately neither his personal statement, nor submitted evidence provide sufficient detail to establish clinical symptoms or provide a nexus with his misconduct. The behaviors and symptoms that his family members and ex-wife describe are also behaviors that are commonly observed with alcohol use disorders.

The AO concluded, "it is my considered clinical opinion there is insufficient evidence of a mental health condition (PTSD) that may be attributed to military service. There is insufficient evidence that his post-service diagnosis of PTSD could be attributed to his misconduct in service."

