

DEPARTMENT OF THE NAVY

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

> Docket No: 5845-22 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 7 December 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 10 January 1986. On 9 October 1986, you received non-judicial punishment (NJP) for four specifications of absence from your appointed place of duty and failure to obey a lawful order/regulation. On 7 September 1987, you received your second NJP for unauthorized absence (UA) totaling 11 days and missing ship's movement. Additionally, you were issued an administrative remarks (Page 13) counseling concerning deficiencies in your performance and conduct. You were advised that any further deficiencies in your performance and/or conduct may result in disciplinary action and in

processing for administrative separation. On 20 July 1990, you were convicted by a summary court-martial (SCM) of two specifications of UA totaling nine days. On 22 August 1990, you self-referred to the Counseling and Assistance Center (CAAC) due to alcohol abuse. On 11 October 1990, you received your third NJP for five specifications of UA totaling 16 days. As a result, on 24 October 1990, you were notified that you were being recommended for administrative discharge from the Navy by reason of misconduct due to commission of a serious offense and misconduct due to pattern of misconduct. You waived your procedural rights to consult with military counsel and present your case to an administrative discharge board (ADB). Your commanding officer (CO) then forwarded your administrative separation package to the separation authority (SA) recommending your administrative discharge from the Navy with an Other Than Honorable (OTH) characterization of service. The SA approved the recommendation for administrative discharge and directed your OTH discharge from the Navy. On 14 November 1990, you were discharged from the Navy with an OTH characterization of service by reason of misconduct due to pattern of misconduct.

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 separation code. You contend that you suffered from PTSD in service, which was diagnosed post-service, that caused your misconduct. You further contend that you had mental health issues, which went unidentified and untreated after witnessing your friend commit suicide, and led to alcohol abuse and contributed to your misconduct. For purposes of clemency and equity consideration, the Board noted you provide an advocacy letter 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 6 October 2022. The AO noted in pertinent part:

There is no evidence that the Petitioner was diagnosed with PTSD in service. Throughout all of his medical and psychiatric records there is no evidence of his friend committing suicide, which seemingly would have been a significant stressor to mention. There is reference to a pending divorce and evidence of pervasive alcohol abuse dating back to pre-service. His misconduct with substantial periods of UA are consistent with an Alcohol Use Disorder. Unfortunately, his personal statement is not sufficiently detailed to establish clinical symptoms or provide a nexus with his misconduct.

The AO concluded, "it is my considered clinical opinion there is insufficient evidence of a diagnosis of PTSD that may be attributed to military service. There is insufficient evidence that his misconduct could be attributed to PTSD."

After thorough review, the Board concluded your potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your three NJPs and SCM conviction, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and concluded your misconduct showed a complete disregard for military authority and regulations. The Board also considered

the likely negative impact your conduct had on the good order and discipline of your command. Additionally, the Board concurred with the AO that there is insufficient evidence of a diagnosis of PTSD that may be attributed to military service, and there is insufficient evidence that your misconduct could be attributed to PTSD. As noted in the AO, your personal statement is not sufficiently detailed to establish clinical symptoms or provide a nexus with your misconduct. As a result, the Board determined your conduct constituted a significant departure from that expected of a Sailor and continues to warrant an OTH characterization. While the Board commends your recent efforts to gain sobriety, 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, changing your reentry code, or granting relief as a matter of clemency or equity. 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.

