



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

█  
Docket No: 5973-22  
Ref: Signature Date

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Dear █:

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 10 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). As part of the Board's review, a qualified mental health professional reviewed your request and provided the Board with an Advisory Opinion (AO) on 7 October 2022. Although you were provided an opportunity to respond to the AO, you chose not to do so.

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

During your enlistment processing you disclosed having used marijuana once, having received a speeding ticket, and denied alcohol abuse. You enlisted in the U.S. Navy and began a period of active duty on 27 August 1996. On 28 August 1996, you were issued an administrative counseling retaining you in the Navy despite your fraudulent induction as evidenced by your failure to disclose required basic enlistment eligibility information. Specifically, you failed to disclose a previous minor in possession of alcohol charge. This counseling also advised you that any further deficiencies in your performance or conduct may result in processing for administrative separation. On 20 November 1996, you were issued a second administrative counseling. This time for two incidents of underage drinking while having knowledge of a lawful order not to do the same. This counseling documented you were being retained in the Navy, was made to afford you an opportunity to undertake and implement correcting action, and again advised you that any further deficiencies or misconduct both in the military or the civilian sector could result in an administrative separation under other than honorable (OTH) conditions. You chose not to make a statement.

On 8 August 1998, you received your first nonjudicial punishment (NJP) for false official statement. On 24 April 1999, you received a second NJP for failure to obey an order and were issued a third administrative counseling entry. On 4 May 1999, you received a third NJP for failure to obey order and disorderly conduct. Subsequently, you were notified of administrative separation processing for pattern of misconduct. Your Commanding Officer recommended your discharge with an Other Than Honorable (OTH) conditions on 19 May 1999. On 17 June 1999, you refused Level III Treatment prior to your separation and were discharged with an OTH by reason of POM.

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 and contention that your misconduct was due to undiagnosed mental health concerns (PTSD) sustained in service. For purposes of clemency and equity consideration, the Board noted your advocacy letter and the provided medical information.

Based on your assertion that you incurred PTSD during military service, which might have mitigated the circumstances that led to your characterization of service, a qualified mental health professional reviewed your request for correction to your record and provided the Board with the AO. The AO stated in pertinent part:

Petitioner was appropriately referred for substance abuse evaluation during his enlistment and properly treated. There is no evidence that he was diagnosed with a mental health condition in military service, or that he exhibited any psychological symptoms or behavioral changes indicative of a mental health condition. Unfortunately, the post-service medical note and his fiancée's character reference are not sufficiently detailed to establish clinical symptoms or provide a nexus with his misconduct. There is no evidence that a mental health condition (PTSD) was diagnosed in service.

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 misconduct could be attributed to a 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 NJPs, 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 is insufficient evidence your misconduct may be attributed to a mental health condition. As a result, the Board concluded your conduct constituted a significant departure from that expected of a Sailor and continues to warrant an OTH characterization. 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,

11/30/2022

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Executive Director

Signed by: █