



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

█  
Docket No. 6691-22  
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 13 January 2023. 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.

You enlisted in the Navy and began a period of active duty on 5 May 1977. The following year, you were convicted by Special Court-Martial (SPCM) for violations of the Uniform Code of Military Justice under Article 121 for larceny of a radio cassette valued at least \$100, Article 128 for assault of a petty officer, and Article 134 for communicating a threat to a petty officer. You were sentenced to two months confinement at hard labor, reduction to E-1, forfeitures of pay, and a Bad Conduct Discharge (BCD). The Convening Authority (CA) elected to suspend your BCD for a period of 6 months.

You avoided further misconduct throughout the period of your suspended punitive discharge. However, on 9 April 1979, you received nonjudicial punishment (NJP) for another violation of Article 121 for the theft of a cassette tape player valued at \$169. In November of that year, you received a second NJP for yet another violation of Article 121, again for the theft of an \$84 tape player, as well as for six specifications of Article 86 due to unauthorized absence (UA). On 4 February 1980, you were tried and convicted before SPCM for a fourth violation of Article 121 due to larceny of a value of \$208.25 from the Navy Exchange, with a sentence which again included a BCD.

Following your release from confinement, you absented yourself without authority for a period of 10 days that ended with your surrender on 25 August 1980. While your case was under appellate review, you received a third and final NJP, on 2 October 1980, for three additional specifications of violations of Article 86 due to UAs. Following completion of appellate review, your BCD was ordered executed and you were discharged for the reason of conviction by SPCM on 24 February 1981.

You previously submitted a request for review of your discharge to the Naval Discharge Review Board (NDRB). On 26 February 1992, the NDRB denied your request after determining your discharge was proper as issued.

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 your post-service character merits consideration for an upgrade on grounds of clemency, you suffered from an extreme alcohol dependency problem which was known to your chain of command, you were treated disparately at that time due to racial disparity, you believe that under current policies you would have received a command-referral for rehabilitation and treatment rather than merely addressing your misconduct, you successfully sought rehabilitation after your discharge, you were able to turn your life around, avoid further criminal activity, maintain your marriage for over 30 years, you routinely attend church, and maintained successful employment with your county government for over 27 years until your retirement, and you volunteer as a tax preparer within your local community. For purposes of clemency and equity consideration, the Board noted you provided supporting documentation describing post-service accomplishments.

Because you also contend that a mental health (MH) condition, presumably from an unrecognized alcohol use disorder, affected your discharge, the Board also considered the AO. The AO stated in pertinent part:

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 diagnosable mental health condition. Post-service, he has claimed he was suffering from unrecognized alcohol use disorder, which contributed to his misconduct. Problematic alcohol use is incompatible with military readiness and discipline. There is no evidence he was unaware of the potential for misconduct when he began to drink or was not responsible for his behavior. Additional records (e.g., post-service 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 mental health condition that may be attributed to military service. There is insufficient evidence 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 NJP and SPCMs, 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. In addition, the Board considered that you were already provided a large measure of clemency by the Navy when they suspended your first BCD and imposed NJP in lieu of a more severe forum for two subsequent instances of larceny prior to again resorting to court-martial. Further, the Board concurred with the AO that there is insufficient evidence your misconduct could be attributed to a mental health condition. Additionally, the Board found your contentions of unfair treatment due to your race to be without merit based on the fact the command gave you multiple chances to correct your behavior and continue serving in spite of serious misconduct such as theft of valuable property from other service members. With respect to your contentions of post-discharge character, the Board favorably notes that you contend to have turned your life around; however, the Board noted that you submitted evidence only of your marriage and employment without any supporting documentation regarding your continued sobriety, lack of further criminal conduct, or community volunteerism. As a result, the Board concluded your conduct constituted a significant departure from that expected of a service member and continues to warrant a BCD. While the Board commends your post-discharge accomplishments and apparent 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 granting you the relief you requested or granting relief as a matter of clemency or equity. Ultimately, the Board concluded the mitigation evidence you provided was insufficient to outweigh the seriousness of your misconduct. 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 the 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 is attached 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,

1/27/2023

