

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

> Docket No. 6920-22 Ref: Signature Date



Dear

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 23 January 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, 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)/mental health condition (MHC) (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 9 November 2022. Although you were provided an opportunity to respond to the AO, you chose not to do so.

You enlisted in the Navy and began a period of active duty on 1 September 1976. On 23 February 1977, you received your first nonjudicial punishment (NJP) for two specifications of unauthorized absence (UA) which totaled 20 days. On 25 August 1977, you were found guilty at a Summary Court-Martial (SCM) of a period of UA which lasted 89 days and were sentenced to forfeit \$275.00 pay per month for one month, restriction for one month, and hard labor without confinement for 45 days. From 13 October 1977 through 2 August 1979, you received six additional NJPs for infractions ranging from UA to destruction of government property and assault.

On 7 August 1979, you were notified of your pending administrative separation by reason of misconduct, at which time you elected your right to consult with military counsel and waived your right to have your case heard before an administrative discharge board. On 24 September 1979, your Commanding Officer (CO) recommended you be discharged with an Other Than Honorable (OTH) characterization of service. However, in October 1979, the Separation Authority directed you be discharged with a characterization of service warranted by your service record. On 17 October 1979, you were discharged with a General (Under Honorable Conditions) (GEN) characterization of service.

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 incurred mental health concerns during military service, (2) while on liberty in **a** person you were with stole a ring but you were unaware of this yet no one believed you, (3) you received NJP for this infraction and were discharged, (4) it was a bad time and you were getting divorced and, (5) you were told you discharge characterization of service would be GEN. For purposes of clemency and equity consideration, the Board noted you provided a personal statement but no supporting documentation describing post-service accomplishments or advocacy letters.

Based on your assertions that you incurred mental health concerns (MHC) during military service, which might have mitigated your discharge 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:

The Petitioner contends that he suffered from mental health conditions during service which mitigated the circumstances of his discharge. Specifically, he notes that he was experiencing significant stress in his marriage which resulted in misconduct. In July 1978, the Petitioner was evaluated for alcohol abuse and started on Antabuse. In July 1979, he was transported to the ER after having overdosed on "30-40 pills of Tylenol," as a suicide gesture. Medical notes from ER indicate "past history of alcohol abuse 1.5 years and is taking Antabuse...personal problems with wife." Psychiatrist evaluated Petitioner during ER stay and noted, "Situation problems with a possible failing marriage. Has not seen his wife in 2 years. Suicidal gesture r/o (rule out) Personality Disorder." Psychiatric note dates September 1979 indicates, "20-year-old male who manifests several immature traits but these are not of sufficient magnitude to warrant a diagnosis of Personality Disorder. Recommend Command processing on the basis of performance."

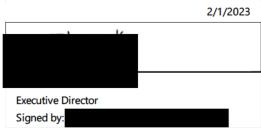
There is no evidence that he was diagnosed with a mental health condition in military service, or that he exhibited any psychological symptoms or behavioral changes indicative of a diagnosable mental health condition. He has provided no medical evidence in support of his claims. Unfortunately, his personal statement is not sufficiently detailed to establish clinical symptoms or provide a nexus with his misconduct. It is likely that he was experiencing situational stress in regards to his marriage, however his personal stressors were unlikely to be the sole cause of his misconduct given the extent and pervasiveness of his infractions. 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 al 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 aside from alcohol use disorder. 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 seven NJPs and SCM, 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. Additionally, character of service is based, in part, on conduct and overall trait averages which are computed from marks assigned during periodic evaluation. You military behavior average was 2.8. A military behavior average of 3.0 was required at the time of your separation for a fully Honorable characterization of service. Further, the Board concurred with the AO that there is insufficient evidence of a diagnosis of a mental health condition that may be attributed to your military service or your misconduct. As a result, the Board concluded significant negative aspects of your active service outweigh the positive aspects and continues to warrant a GEN 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 granting you the relief you requested or granting relief as a matter of clemency or equity. Accordingly, given the totality of the circumstances, the Board determined that your request does not merit relief.

Based on your application, in which you stated your belief that you received an OTH characterization of service, the Board felt it was worth reemphasizing the fact that you were discharged with a GEN characterization of service. This characterization is reflected in Box 24 of your DD Form 214.

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,