

## **DEPARTMENT OF THE NAVY**

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

> Docket No. 7086-22 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 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 30 August 1979. You were referred for a mental health evaluation on 30 June 1980 due to observations that you were shaking and straining to control your emotions when you were upset. During this evaluation, you revealed that your "father" had shot your mother and killed your sister. Ultimately, you were diagnosed with a situational adjustment reaction and found fit for full duty.

On 25 July 1980, you absented yourself without leave and remained so until 20 October 1980. Medical records from 2 December 1980 indicated that you began abusing alcohol in November 1980, after your return, due to restrictions that left you "fed up with life." During a follow up substance abuse screening, you admitted to having used marijuana, LSD, and "speed," resulting

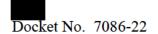
in a diagnosis of immature personality disorder, characterized by sporadic misuse of alcohol and drugs. You were formally counseled regarding retention with warnings of possible separation for further misconduct and, on 12 February 1981, subject to nonjudicial punishment (NJP) for a violation of Article 92 of the Uniform Code of Military Justice due to violation of a General Order or regulation by using a controlled substance. A substance abuse treatment consultation in April 1981 diagnosed you with multi-drug abuse and recommended that you receive in-patient rehabilitation treatment, citing your admission of having used marijuana at least three times per day since November 1980, having begun using cocaine in January of 1981, and noting that you were likely a danger to yourself and others. A psychiatric evaluation, on 29 June 1981, diagnosed you with an atypical Adjustment Disorder (AD) and a need to rule out Personality Disorder (PD), indicating that you needed counseling to resolve the extreme negativity you felt toward your stepfather, which included an expressed plan to kill him upon your release. Again, they found you fit for full duty, with no signs of neurosis, psychosis, or disability PD and recommended that you continue substance abuse treatment.

Following your release, you again absented yourself without leave from 14 July 1981 until 30 October 1981. Upon your return, you were charged and tried before Special Court-Martial (SPCM) for a violation of Article 86 due to unauthorized absence (UA), and your sentence included a punitive discharge. In the separation physical conducted during your confinement, you endorsed depression/excessive worry, loss of memory, and dizziness as medical symptoms but were found fit to separate. After your release from confinement, you again absented yourself and were returned to military custody following apprehension. Prior to beginning your appellate leave, you were tried by Summary Court-Martial (SCM) for UA and served an additional period of confinement. After your appellate review of your case was completed, your Bad Conduct Discharge (BCD) was effected on 11 April 1983.

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 you suffered from serious mental and emotional issues during your enlistment due to your stepfather's actions, you entered service during your minority, these factors caused you to absent yourself several times and develop problems with drug use. You also cite to additional trauma in having been involved in an automobile accident that injured your thengirlfriend and killed her aunt. However, you state that you have since matured and become a productive member of your community, to include raising your family and maintaining gainful employment. For purposes of clemency and equity consideration, the Board noted you did not provide supporting documentation describing post-service accomplishments or advocacy letters.

Because you contend that a mental health condition affected your discharge, the Board also considered the AO. The AO stated in pertinent part:

The Petitioner contends that he suffered from mental health issues stemming from historical family problems and trauma that resulted in his misconduct. There is evidence that he was diagnosed with Immature Personality Disorder, Adjustment Disorder and significant substance abuse with several different substances. Immature Personality Disorder and Adjustment Disorder are diagnoses that are given when one is responding to situational stressors in inadequate ways and is expected to improve over time, as opposed to an organic or more serious



diagnosis that may warrant a higher level of care. 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. 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 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 NJP, SPCM, 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, the the Board concurred with the AO in regard to your mental health contentions and found the available evidence insufficient to establish that you suffered a condition which mitigated your misconduct and resulting punitive discharge. The Board observed that your record does, however, indicate that you suffered severe childhood trauma and that your application asserts you have overcome both that as well as the additional issues surrounding the misconduct while resulted in your discharge. However, the Board concluded that it would additional supporting evidence of these contentions to potentially consider your post-discharge character with respect to an upgrade of your discharge based on clemency. 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. 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.

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.

