

DEPARTMENT OF THE NAVY

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

> Docket No. 7537-22 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 9 March 2023. The names and votes of the members of the panel 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, 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).

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.

A review of your record shows that you enlisted in the Navy and entered active duty on 11 March 1977. On 29 October 1977, you were hospitalized after threatening to jump overboard from your ship. At the time, you were diagnosed with a personality disorder based on observations of "no evidence of delusions, audiovisual hallucinations, suicidal or homicidal ideation." You were released back to duty, after two days of observation, but recommended for administrative separation should your conduct merit it.

On 13 December 1977, you accepted non-judicial punishment (NJP) imposed by your Commanding Officer (CO) for violating Article 92 of the Uniform Code of Military Justice (UCMJ) for disobeying a lawful order, specifically the uniform policy. On 1 August 1978, you again received NJP for violating Article 86 (Unauthorized Absence (UA)) of the UCMJ for being UA from 17 July 1978 until 20 July 1978. On 30 May 1979, you were convicted by a special court-martial (SPCM) for two period of UA covering 28 August 1978 – 27 February 1979 and 31 March 1979 – 5 April 1979. You were sentenced to reduction to E-1, forfeiture of pay for two months, confinement with hard labor for two months, and a Bad Conduct Discharge (BCD). On 17 July 1979, your CO granted you appellate leave pending completion of appellate review of your SPCM. On 14 December 1979, the Navy Court of Military Review affirmed your special court-martial findings and sentence. You subsequently were discharged from the Navy, on 9 April 1980, with a BCD.

In 1981, you petitioned the Naval Discharge Review Board (NDRB) requesting an upgrade to your discharge to General under Honorable conditions due to having marital problems in service, not being able to adjust to military life, and claiming that you should have been administratively discharged in 1978. The NDRB denied that request noting you did not provide any evidence that you had marital problems during your active duty service nor that you requested a hardship discharge prior to going UA.

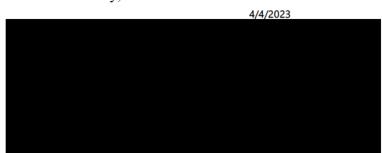
The Board carefully considered all potentially mitigating factors to determine whether the interests of justice warrant relief in your case in accordance with the Kurta, Hagel, and Wilkie Memos. These included, but were not limited to, your desire for a disability discharge and contentions that you deserve a medical discharge because you suffered from mental health conditions while in-service that resulted in your misconduct. For purposes of clemency and equity consideration, the Board noted you did not provide documentation describing post-service accomplishments or advocacy letters.

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 SPCM outweighed these mitigating factors. In making this finding, the Board noted there was no evidence of a mental health condition in-service and you provided no evidence of a mental health diagnosis post-service. Finally, the Board noted you provided no evidence to substantiate your contentions. 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.

Regarding your request for a disability discharge, as previously discussed, the Board found no evidence that you suffered from a mental health condition incurred or aggravated as a result of your active duty service. Regardless, even if such evidence existed, the Board determined you were ineligible for disability processing since service regulations directed misconduct processing

to supersede disability processing. 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,