

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

> Docket No. 8150-22 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 limitations 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 3 April 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 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)/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 also considered an advisory opinion (AO) from a qualified mental health professional, dated 23 February 2023. Although you were provided an opportunity to comment on the AO, you chose not to do so.

You entered active duty with the Navy on 2 December 1970. On 11 December 1970, you received a medical evaluation which determined you had a problem with your nerves with evidence of emotional immaturity. On 5 January 1971, you received non-judicial punishment (NJP) for unauthorized absence (UA) for two days. On 7 January 1971, you received an additional NJP for willfully disobeying a lawful order from a commissioned officer and three specifications of willfully disobeying a lawful order from a non-commissioned officer (NCO).

On 11 January 1971, an Aptitude Board (AB) determined you did not warrant retention and recommended you be discharged with a General (Under Honorable Conditions) (GEN) characterization of service. As a result, you were counseled and acknowledged not being eligible for reenlistment due to unsuitability and the assignment of a RE-4 reenlistment code. The Separation Authority (SA) approved the AB's recommendation and, on 15 January 1971, you were discharged with GEN characterization of service due to unsuitability.

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 contentions that you incurred mental health (PTSD) concerns while on active duty due to being mistreated, suffering from unrecognized Asperger's Syndrome, and being injured while in confinement. For purposes of clemency and equity consideration, the Board noted you provided a personal statement, but failed to provide supporting documentation describing post-service accomplishments or advocacy letters.

As part of the Board's review, a qualified mental health professional reviewed your request and provided the Board with an AO on 23 February 2023. The mental health professional stated in pertinent part:

During military service, Petitioner was evaluated and received no formal mental health diagnosis, although problematic characterological traits were identified. This absence of diagnosis was based on observed behaviors and performance during his period of service, the information he chose to disclose to the mental health clinician, and the psychological evaluation performed by the mental health clinician. He has provided no post-service medical evidence in support of his claims of PTSD. He has provided post-service evidence of Autism Spectrum Disorder (ASD) and other mental health conditions that is temporally remote to his military service. While it is possible that unrecognized symptoms of ASD may have contributed to his failure to adapt in service, the in-service conclusion that his condition existed prior to service remains unchanged even with additional knowledge regarding ASD over time. There is insufficient information regarding his other post-service diagnosed mental health conditions to attribute his misconduct to those conditions. Additional records (e.g., post-service mental health records describing the Petitioner's diagnosis, history, and their specific link to his misconduct) may aid in rendering an alternate opinion.

The AO concluded, "it is my clinical opinion there is insufficient evidence of a diagnosis of PTSD or another mental health concern that may be attributed to military service. There is insufficient evidence to attribute his misconduct to PTSD or another 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. Additionally, the Board concurred with AO that there is

insufficient evidence of a mental health condition that may be attributed to your military service or misconduct. Finally, the Board noted that there is no evidence in your record, and you submitted none, to support your contentions. As a result, the Board concluded significant negative aspects of your service outweigh the positive aspects and continues to warrant a GEN characterization. While the Board carefully considered the evidence you provided in mitigation, 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 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,