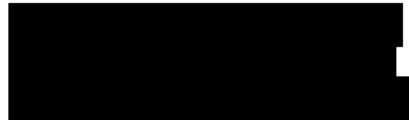




**DEPARTMENT OF THE NAVY**  
BOARD FOR CORRECTION OF NAVAL RECORDS  
701 S. COURTHOUSE ROAD, SUITE 1001  
ARLINGTON, VA 22204-2490

█  
Docket No. 8531-22

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 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 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 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 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). 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 16 February 2023. Although provided with an opportunity to submit a rebuttal to the AO, you chose not to do so.

You enlisted in the Navy and began a period of active duty on 11 July 1989. On 20 August 2002, you reenlisted. On 22 March 2006, you were arrested by █ Police and charged with attempted indecent liberties and use of communications device to facilitate certain offense involving minors. On 28 June 2006, you were notified of your pending administrative separation by reason of misconduct due to commission of a serious offense (COSO) as a result of the aforementioned charges, at which time you elected your right to consult with counsel and to have your case heard before an administrative discharge board (ADB). On 2 August 2006, you were indicted by the █ on two felony charges; electronic means to solicit a minor and attempted indecent liberties. On 3 August 2006, an ADB was held and found the

preponderance of the evidence supports a finding of misconduct. The ADB recommended you be discharged with an Other Than Honorable (OTH) characterization of service by reason of COSO. On 17 August 2006, your Commanding Officer (CO) recommended to the separation authority that you be discharged with an OTH for COSO. On 19 September 2006, the separation authority approved the recommendation and directed you be discharged. On 6 October 2006, you were so discharged.

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 change your reentry code along with your contentions that you incurred PTSD, mental health concerns (MHC), and harassment, you received nonjudicial punishment (NJP) for offense which were ultimately dropped by the █ judicial system, there was a “rush to judgement by your chain of command,” and you were the victim of “overzealous policing” which caused you difficulties in finding post-discharge employment. For purposes of clemency and equity consideration, the Board considered the evidence you provided in support of your application.

Based on your assertions that you incurred PTSD, MHC, and harassment 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 an AO. The AO stated in pertinent part:

The Petitioner submitted a personal statement, letter to the VA with supplemental form, and one character reference. The Petitioner contends that he suffered from PTSD and other mental health issues, and was “a victim of over-zealous policing.” 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. 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 your potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your alleged sexual misconduct, as evidenced by your civil arrest and indictment, outweighed these mitigating factors. The Board noted that your alleged misconduct required your command to process you for administrative separation. As part of the administrative separation processing, you were afforded and exercised the due process rights afforded to you by applicable regulations. In reviewing your record, the Board noted that an ADB found the evidence sufficient to support your separation and recommended an OTH based on the severity of your alleged misconduct. In the Board’s opinion, this was sufficient evidence to support your assigned characterization of service,

regardless of the final decision of the State of [REDACTED] in your civil case. Ultimately, the Board noted you provided no evidence to substantiate your contention that your civil criminal case was dismissed or that an error or injustice exists with your administrative separation processing. Further, the Board noted that civilian jurisdictions may choose to dismiss charges for a multitude of reasons unrelated to your actual guilt or innocence. Therefore, absent additional evidence regarding the circumstances of your case, the Board found this basis, by itself, insufficient to support relief in your case. In making this finding, contrary to your assertion, the Board noted that non-judicial punishment was not imposed on you for your alleged civil misconduct. Finally, the Board concurred with the AO that there is insufficient evidence of a mental health condition that may be attributed to your military service or misconduct. As a result, the Board determined your conduct constituted a significant departure from that expected of a service member and continues to warrant an OTH characterization of service. 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 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,

4/17/2023

[REDACTED]

Executive Director

Signed by: [REDACTED]