

DEPARTMENT OF THE NAVY

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

> Docket No. 6568-23 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 3 April 2024. 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) (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) furnished by a qualified mental health professional. Although you were afforded an opportunity to submit an AO rebuttal, you chose not to do so.

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.

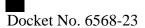
You enlisted in the Navy and began a period of active duty on 25 October 1989. On 9 March 1990, you received non-judicial punishment (NJP) for drunken driving. Additionally, you were issued were issued an administrative remarks (Page 13) counseling warning documenting your deficiency in your conduct of a disciplinary nature with civilian or military authorities. The Page 13 expressly warned you that any further deficiencies in your performance and/or conduct may result in disciplinary action and administrative separation processing. On 17 January 1992, you were apprehended by authorities for the alleged charge of robbery resulting in injury. Ultimately, on 12 October 1993, you were convicted by a court of assault and robbery and sentenced to four years and six months of confinement.

Consequently, you were notified that you were being recommended for administrative discharge from the Navy by reason of misconduct due to civilian conviction and commission of a serious offense. You elected your procedural right to consult with military counsel and to present your case to an administrative discharge board (ADB). Ultimately, the separation authority directed your administrative discharge from the Navy with an Other Than Honorable (OTH) character of service by reason of misconduct due to commission of a serious offense. On 18 August 1995, 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 character of service to General (Under Honorable Conditions) or a better character of service because you were in the Gulf War and have PTSD. The Board considered your contentions that: (1) you incurred PTSD during your military service, (2) you failed to keep your good senses and while doing so you thought that you were having a good time with your fellow service members and made poor choices and fell out of character, (3) you were eight to ten months removed from combat, unsure of how you were doing or feeling about some things but looking back you believe that you could have used some counseling, (4) the weight of that evening has been a strenuous burden and you have made a conscience decision to set things right, and (5) you would very much like a correction to your record because your father was in Vietnam as a Marine and your brother was in the Navy assigned to a Marine Division, you would like very much to hold your head a little higher with them. For purposes of clemency and equity consideration, the Board considered the supporting documentation you provided in support of your application.

As part of the Board's review, a qualified mental health professional reviewed your contentions and the available records and provided the Board with an AO on 8 February 2024. The AO stated in pertinent part:

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. Throughout his disciplinary processing, there were no concerns raised of a mental health condition that would have warranted a referral for evaluation. Post-service, he has provided medical evidence of diagnoses of PTSD and other mental health conditions that are temporally remote to military service and appear unrelated. Unfortunately, his personal statement is not sufficiently detailed to establish clinical symptoms in



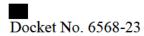
service or provide a nexus with his misconduct. Additional records (e.g., postservice mental health records describing the Petitioner's diagnosis, symptoms, and their specific link to his misconduct) may aid in rendering an alternate opinion..

The AO concluded, "it is my clinical opinion there is insufficient evidence of a diagnosis of PTSD or another mental health condition 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 your potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your NJP and civilian conviction, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and concluded your misconduct showed a complete disregard for military authority and regulations. The Board also considered the negative impact your conduct likely had on the good order and discipline of your command and the discrediting nature of your civilian conviction. Further, the Board concurred with the AO that there is insufficient evidence of a diagnosis of PTSD or another mental health condition that may be attributed to military service, and there is insufficient evidence to attribute your misconduct to PTSD or another mental health condition. As the AO explained, unfortunately, your personal statement is not sufficiently detailed to establish clinical symptoms in service or provide a nexus with your misconduct, and there is no evidence that you were diagnosed with a mental health condition in military service, or that you exhibited any psychological symptoms or behavioral changes indicative of a diagnosable mental health condition. Therefore, the Board determined that the evidence of record did not demonstrate that you were not mentally responsible for your conduct or that you should otherwise not be held accountable for your actions.

As a result, the Board concluded your conduct constituted a significant departure from that expected of a service member and continues to warrant an OTH characterization. While the Board carefully considered the evidence you submitted 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.

