



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

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Docket No: 7992-20
Ref: Signature Date



Dear Petitioner:

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 the entire record, the Board for Correction of Naval Records (Board) found the evidence submitted was insufficient to establish the existence of probable material error or injustice. Consequently, your application has been denied.

A three-member panel of the Board, sitting in executive session, considered your application on 19 July 2021. 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). In addition, the Board considered the advisory opinion (AO) furnished by a qualified mental health professional dated 24 May 2021, which was previously provided to you.

You enlisted in the Marine Corps and began a period of active duty on 20 November 1985. On 8 May 1986, you received nonjudicial punishment (NJP) for disobeying a lawful order. Additionally, you were counseled and warned that further deficiencies in your performance/conduct could result in administrative discharge action. On 3 March 1987, you were diagnosed as Alcohol Dependent and recommended for Level III treatment, Antabuse treatment, and attendance at Alcohol Anonymous, which you refused. On 6 March 1987, you received NJP for being intoxicated on duty and wrongful appropriation. On 31 March 1987, you were counseled concerning abuse of alcohol and the consequences if you failed Level III treatment, and humanitarian transfer pending NJP. You were warned that failure to take corrective action could result in administrative discharge action. On 9 April 1987, you received NJP for two specifications of failing to obey orders, drunk and reckless driving, and being absent from appointed place of duty. On 15 April 1987, you received NJP for disobeying a lawful

order. Additionally, you refused Level III treatment for alcohol rehabilitation, and fully understood that your refusal of treatment made you subjected to prosecution under the Uniform Code of Military Justice. On 16 April 1987, you received a Punitive Letter of Reprimand. On 27 May 1987, you acknowledged that you were evaluated by a medical officer and diagnosed as being drug or alcohol dependent, but did not desire to enroll in a program in conjunction with your discharge. On 6 June 1987, you were in a car accident where you were struck by a drunk driver. On 14 July 1987, you were notified of administrative discharge action by reason of a pattern of misconduct. After being afforded your procedural rights, you elected to waive your right to have your case heard before an administrative discharge board. Your case was forwarded to the separation authority with the recommendation that you receive an other than honorable discharge. On 10 August 1987, a staff judge advocate reviewed your case and found it to be sufficient in law and fact. On 14 August 1987, the separation authority directed that you be separated from the Navy with an OTH discharge due to a pattern of misconduct. On 17 September 1987, you were discharged from the Navy with an OTH characterization of service.

A qualified mental health professional reviewed your request for correction to your record and provided the Board with an AO regarding your assertion that you were suffering from a mental health condition during your service. The AO noted that based on the available evidence, the preponderance of objective evidence established you incurred a mental health condition and TBI during your military service, but as your in-service misconduct occurred before your accident, your Adjustment Disorder, and TBI should not be considered as mitigation for your in-service misconduct.

The Board carefully considered all potentially mitigating factors to determine whether the interests of justice warrant relief in your case in accordance with the Wilkie Memo. These included, but were not limited to your statement that after being run over by a drunk driver in a pick-up truck, your life changed. You had numerous injuries that took months to heal and some that will never heal, and it ruined your military career. You used alcohol to cope with depression, and you were ordered to treatment for alcohol addiction. At that time, you stated that you were ignorant of your illness and the repercussions of refusing treatment, and to this day regret that decision, was discharged for refusing treatment, and the Department of Veterans Affairs has granted you 80% service-connected from the residual effects of your military accident. Based upon this review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your four NJPs prior to your accident, and the fact that you were warned of the consequences of further misconduct on more than on occasion outweighed these mitigating factors. Additionally, the Board concurred with the AO that based on the available evidence, the preponderance of objective evidence established you incurred a mental health condition and TBI during your military service, but as your in-service misconduct occurred before your accident, your Adjustment Disorder, and TBI should not be considered as mitigation for your in-service 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 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,

7/23/2021

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Executive Director

Signed by █