



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

Docket No: 8342-20
Ref: Signature Date

[REDACTED]

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 30 June 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 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 an advisory opinion (AO) from a qualified mental health professional dated 3 May 2021, which was previously provided to you.

The Board determined your personal appearance, with or without counsel, would not materially add to their understanding of the issues involved. Therefore, the Board determined a personal appearance was not necessary and considered your case based on the evidence of record.

You enlisted in the Navy on 26 March 1997. On 22 October 1997, you received nonjudicial punishment (NJP) for driving under the influence of alcohol. On 11 May 1998, you received a second NJP for an unauthorized absence (UA) from your appointed place of duty and failure to obey an order. On 6 April 1999, you received a third NJP for an UA of less than 24 hours and uttering two worthless checks. On 22 April 1999, you received a fourth NJP for obstruction of

justice when you wrongfully influenced the actions of your Commanding Officer (CO) by misrepresenting facts. Subsequently, you were notified of pending administrative separation action by reason of misconduct due to pattern of misconduct and commission of a serious offense. After you waived your procedural rights, your CO recommended you be discharged with an other than honorable (OTH) characterization of service due to pattern of misconduct and commission of a serious offense. Your record is incomplete in that it does not contain the discharge authority's approval of this recommendation, but a review of your Certificate of Release or Discharge from Active Duty (DD Form 214), reflects the discharge authority concurred with the CO and directed discharge with an OTH characterization of service by reason of misconduct. On 10 July 1999, you were discharged.

As part of the Board's review, a qualified mental health professional reviewed your request and provided the Board with an AO on 3 May 2021. The AO stated your in-service records do not contain evidence of a diagnosis of a mental health condition or psychological/behavioral changes that may have indicated a mental health condition. Specifically, the AO stated that throughout your disciplinary actions, counselings, and administrative processing there were no concerns noted which would have warranted referral to mental health resources. Additionally, the AO noted you did not present evidence that indicated your experience of life stressors was extraordinary or unique or that you met the diagnostic criteria for a mental health condition during your military service. Based on the available evidence, the AO concluded the objective evidence does not establish you were diagnosed with a mental health condition, suffered from a mental health condition at the time of your military service, or that your in-service misconduct could be mitigated by a mental health condition. The AO was provided to you on 7 May 2021, and you were given 30 days in which to respond. When you did not respond after 30 days, your case was submitted to the Board for review.

The Board carefully reviewed your application, weighed all potentially mitigating factors, and considered your contention you developed an alcohol problem while waiting approximately a year for orders to your command. Despite trying to "do better" and participating in the command-directed alcohol program, your drinking problem continued and resulted in misconduct. The Board noted you did not submit advocacy letters or post-service documents to be considered for clemency purposes. Unfortunately, the Board did not find evidence of an error or injustice that warrants upgrading your characterization of service. The Board, relying on the AO and applying liberal consideration, concluded there was insufficient evidence of an error or injustice that warrants granting clemency in the form of an upgraded characterization of service.

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 desire to upgrade your discharge and your contentions discussed above. Based upon this review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined your misconduct outweighed these mitigating factors. 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,

7/14/2021

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Executive Director

Signed by █