



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. 1041-21
Ref: Signature Date

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Dear █,

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.

A three-member panel of the Board, sitting in executive session, considered your application on 24 November 2021. The names and votes of the members of the panel 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. In addition, the Board considered the advisory opinion contained in Commander, Navy Personnel Command (PERS-00J) letter of 5 May 2021 along with your response to the opinion.

A review of your record shows that you entered active duty with the Navy in 2005 and served without incident while reaching the paygrade of E-8. However, non-judicial punishment was imposed on you for unauthorized absence and drunken operation of a vehicle in December 2017. Due to the alcohol related misconduct, you attended and completed Level I rehabilitation treatment in February 2018. Despite your treatment, you continue to abuse alcohol due to your dependence and were involved in additional alcohol related unauthorized absences. You subsequently completed a five week intensive rehabilitation program prior to having non-judicial punishment imposed on you in January 2019 for your unauthorized absences. You were notified of administrative separation processing for alcohol rehabilitation failure on 7 February 2019 leading you to elect an administrative separation board. In April 2019, an administrative separation board determined the evidence supported a finding of alcohol rehabilitation failure and recommended your separation from the Navy. Your command reported in their letter of transmittal that you were previously screened for Post-Traumatic Stress Disorder (PTSD)/Traumatic Brain Injury (TBI) and neither condition contributed to your misconduct. In May 2019, you were medically cleared for separation. That same month you were diagnosed

with Generalized Anxiety Disorder and Major Depressive Disorder, single episode. On 31 May 2019, you were discharged pursuant to your administrative board findings with an Honorable characterization of service. Post-discharge, the Department of Veterans Affairs rated you for PTSD with alcohol use disorder along with a number of other service connected disability conditions totaling a combined 100% rating.

The Board carefully considered your arguments to be placed on the disability retirement list with the removal of alcohol rehabilitation failure from your military record. You argue that you were erroneously separated by the Navy since your separation package states you were screened for PTSD/TBI when no screening occurred. You further assert that you were experiencing symptoms of depression and anxiety as early as January 2019 due to your PTSD. Unfortunately, the Board disagreed with your rationale for relief.

First, the Board concluded the preponderance of the evidence supports the finding by the administrative separation board and the Navy that you met the criteria for alcohol rehabilitation failure. The Board based their finding on evidence that you completed Level I alcohol rehabilitation treatment in February 2018 based on an alcohol related incident but relapsed later that same year by committed additional alcohol related unauthorized absences. MILPERSMAN 1910-152 states that a service member meets the definition of "treatment failure" when they incur an alcohol related incident at any time in their career after a period of treatment at Level I or above, that was precipitated by a prior incident. As a result, the Board determined your record properly documents that you were an alcohol rehabilitation failure and removal of these documents from your record is not merited.

Second, the Board concluded your administrative separation from the Navy for alcohol rehabilitation failure remains appropriate despite your claims of error based on a lack of a PTSD/TBI examination. As pointed out in the advisory opinion and as documented in your military medical record, you were never diagnosed with either condition while on active duty. As a result, the Board concluded the Navy appropriately determined neither condition played a factor in your misconduct or administrative separation. The Board was not persuaded by your arguments of experiencing PTSD symptoms as early as January 2019 since the misconduct that formed the basis for your non-judicial punishment and finding of alcohol rehabilitation failure occurred in November 2018. Based on these factors, the Board agreed with the advisory opinion that your administrative separation was conducted in accordance with applicable instructions and remains supported by the evidence in your case.

Third, the Board determined the preponderance of the evidence does not support your placement on the disability retirement list. In order to qualify for military disability benefits through the Disability Evaluation System with a finding of unfitness, a service member must be unable to perform the duties of their office, grade, rank or rating as a result of a qualifying disability condition. Alternatively, a member may be found unfit if their disability represents a decided medical risk to the health or the member or to the welfare or safety of other members; the member's disability imposes unreasonable requirements on the military to maintain or protect the member; or the member possesses two or more disability conditions which have an overall effect of causing unfitness even though, standing alone, are not separately unfitting. In your case, the Board concluded the evidence did not support a finding that you met any of the criteria for a

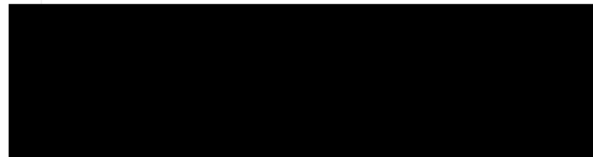
finding of unfitness. Specifically, the Board noted in your separation fitness report ending on 31 May 2019 that you continued to service as the Leading Chief Petty Officer for code of 74 personnel, including two other Chief Petty Officers, while earning above standard performance trait marks for deck plate leadership and institutional and technical expertise. While the report documented your February non-judicial punishment and appropriately assigned you marks that reflected your misconduct, the Board concluded from the report that you were otherwise performing your duties at or above fleet standards for your paygrade and rate. As such, when considered in conjunction with the fact that none of your medical providers felt your medical conditions created a sufficient occupational impairment to require a referral to a medical board, the Board determined the preponderance of the evidence did not support a finding you were unfit for continued naval service at the time of your discharge from the Navy. Therefore, they Board found that your request to be placed on the disability retirement list was not supported by the preponderance of the evidence in your case. Accordingly, the Board found insufficient evidence of error or injustice to warrant a change to your record.

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 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.

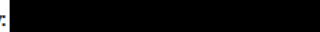
Sincerely,

11/27/2021

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Deputy Director

Signed by:

A black rectangular redaction box covering the name of the Deputy Director.