



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: 7017-21
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 28 March 2022. 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, which was previously provided to you. Although you were afforded an opportunity to submit a rebuttal, you did not do so.

During your enlistment processing you disclosed a prior history of two incidents of driving under the influence and one of public intoxication. An enlistment waiver was not required.

You enlisted in the Navy and began a period of active duty on 25 February 1985. Soon after, you were briefed on the Navy's drug and alcohol abuse policy. On 20 June 1985, you received your first nonjudicial punishment (NJP) for drunk or reckless operation of a vehicle. You were subsequently issued a retention warning capturing this deficiency and warning you that further misconduct may result in processing for administrative separation. On 20 September 1985, you

were counseled regarding an alcohol related incident in berthing. This incident resulted in you being referred to the Counseling and Assistance Center (CAAC). On 8 October 1985, a CAAC evaluation yielded you were considered a high risk for future alcohol related problems and recommended you attend Level III alcohol rehabilitation treatment. On 31 January 1986, you completed treatment with a fair prognosis and placed in an aftercare program. Further, you were advised failure to comply with said aftercare program may result in consideration for administrative separation. On 15 June 1986, you received a second NJP for using provoking words towards a petty officer and assaulting a fellow Sailor causing grievous bodily harm. Additionally, you were extended in your aftercare program. On 3 November 1986, you were notified of your commanding officer's (CO) intent to recommend to the discharge authority that you be discharged due to alcohol rehabilitation failure and commission of a serious offense (COSO). You elected to consult with counsel and have your case heard before and administrative discharge board (ADB). On 22 January 1987, an ADB was held and found, by a vote of 3-0, that you committed serious offenses and failed alcohol abuse rehabilitation. The ADB also recommended, by a vote of 3-0, that you be separated from the naval service with an other than honorable (OTH) characterization of service. On 5 February 1987, you received a transcript of the ADB findings and elected not to submit comments to Commander, Military Personnel Command (NPC). However, on 9 February 1987, you did in fact submit a statement to NPC requesting a general (under honorable conditions) characterization of discharge. Additionally, on this date your CO recommended you be separated with an OTH be reason of alcohol rehabilitation failure and COSO capturing, "he has not been able to maintain sobriety while administrative separation proceedings were pending." On 24 February 1987, you received a third NJP for assaulting a fellow Sailor and drunk and disorderly conduct. On 25 February 1987, the discharge authority directed you be separated with an OTH characterization of service by reason of COSO. On 2 March 1987, you were offered and declined inpatient treatment at a Department of Veterans Affairs (VA) hospital and were discharged.

The Board carefully considered all potentially mitigating factors in your petition to determine whether the interests of justice warrant relief in your case in accordance with the Wilkie Memo. In your petition, you contend you were an alcoholic as a result of childhood sexual trauma and would like to obtain VA benefits for heart and health issues. You also add that you were under the impression that an OTH characterization of service would automatically be upgraded.

In connection with your assertion that you suffered from PTSD, the Board requested, and reviewed, the AO. The AO reviewed your service record as well as your petition and the matters that you submitted. According to the AO:

In service, the Petitioner was diagnosed with an alcohol use disorder. Unfortunately, Petitioner has provided no post-service medical evidence in support of his claims. The Petitioner's statement is insufficiently detailed to establish a nexus with his misconduct. Additional records (e.g., post-service mental health records listing the Petitioner's diagnosis, symptoms, onset, and their specific link to his misconduct) are required to render an alternate opinion.

The AO concluded, “based on the available evidence, it is my medical opinion that there is insufficient evidence that the Petitioner may have incurred PTSD during military service. There is insufficient evidence that his misconduct could be attributed to PTSD.”

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 contentions noted above and your desire to upgrade your discharge. Based upon this review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. In making this finding, the Board considered the seriousness of your multiple offenses that documented a complete disregard for military authority and regulations. Further, the Board considered the fact you were provided alcohol rehabilitation treatment by the Navy. Finally, the Board concurred with the AO. So despite your post-discharge good character, these factors led the Board to determined that your conduct was a serious departure from that expected of a sailor and continues to warrant an OTH characterization of service. 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,

4/11/2022

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Executive Director
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