



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: 0214-22
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 11 May 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 dated 23 March 2022 and your response to the AO.

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 31 January 1955. On 1 October 1956, you were convicted by a summary court-martial (SCM) of dereliction in the performance of duty. On 19 December 1956, you received non-judicial (NJP) for an unauthorized absence. During the period from 4 January 1957 to 4 September 1957, you were

convicted by a SCM on four separate occasions. Your offenses were failure to meet restricted man's muster and three periods of unauthorized absence totaling six days. On 11 April 1958, you received your second NJP for an unauthorized absence and failure to obey a lawful order. On 15 May 1958, you were convicted by a special court-martial (SPCM) of wrongfully lying down on post as a sentry on two separate occasions. On 19 August 1958, you received your sixth conviction by a SCM of an unauthorized absence and failure to obey a lawful order.

On 2 September 1958, you were notified that you were being recommended for administrative discharge from the Navy by reason of unfitness. Your commanding officer (CO) forwarded your administrative separation package to the separation authority (SA) recommending your administrative discharge from the Navy with an Other Than Honorable (OTH) characterization of service. On 16 September 1958, an enlisted performance evaluation board was convened, and found that you committed misconduct as evidenced by your repeated misconduct and recommended your administrative separation from the Navy with an OTH characterization of service. The SA approved the recommendation and directed your OTH discharge from the Navy by reason of unfitness, and on 30 September 1958, you were so discharged.

As part of the Board's review, a qualified mental health professional reviewed your request and provided the Board with an AO on 23 March 2022. The AO noted in pertinent part:

During military service, the Petitioner was diagnosed with an alcohol use disorder. Throughout his disciplinary processing, there were no concerns raised of another mental health condition that would have warranted a referral for evaluation. Problematic alcohol use is incompatible with military readiness and discipline and considered amenable to treatment, depending on the individual's willingness to engage in treatment. While it is possible that his misconduct could be attributed to effects of excessive alcohol consumption, when evaluated during military service, he demonstrated an awareness of the potential for misconduct when he began to drink and was deemed responsible for his behavior.

The AO concluded, "[b]ased on the available evidence, it is my clinical opinion that there is insufficient evidence of a mental health condition other than his in-service diagnosed alcohol use disorder. There is insufficient evidence that his misconduct could be attributed to a mental health condition other than his alcohol use disorder." You provided a response to the AO that provided additional clarification of the circumstances of your case.

The Board carefully reviewed your application, weighed all potentially mitigating factors, and considered your contentions that majority of your service was "honorable time" and your issues were due to a horrible disease (alcohol) that you had no control over, and the Navy did not have treatment programs to help you. You further state that after serving you sought help for your disease and joined an alcohol anonymous (AA) and have been sober for over 56 years and that you have started new AA chapters.

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 submission of supporting documentation, your contentions as previously discussed and your desire to upgrade your discharge character of service.

Based upon this review, the Board concluded your potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your two NJPs, six SCM convictions, and SPCM conviction, outweighed these mitigating factors. In making this finding, the Board considered your repeated misconduct and concluded your record of misconduct showed a complete disregard for military authority and regulations. Additionally, the Board concurred with the AO that you demonstrated an awareness of the potential for misconduct when you began to drink and was deemed responsible for your misconduct. As a result, the Board determined your conduct constituted a significant departure from that expected of a Sailor and continues to warrant an OTH characterization. After applying liberal consideration, the Board did not find evidence of an error or injustice that warrants upgrading your characterization of service or granting clemency in the form of an upgraded characterization of service. 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.

Sincerely,

5/25/2022

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Executive Director

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