



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

■  
Docket No: 794-22  
Ref: Signature date

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Dear ■

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.

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 2 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 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 1 March 2022, which was previously provided to you. You were given 30 days in which to submit a response and provided additional information for consideration.

You enlisted in the Navy and began a period of active duty on 23 July 1987. On 22 February 1990, you were counseled regarding alcohol abuse, which was affecting your performance, conduct, and military bearing. You were warned that further misconduct could result in administrative discharge action. On 25 January 1991, you reenlisted. On 4 March 1992, you were convicted by civil authorities of driving under the influence (DUI) of alcohol and having a blood alcohol, by weight, of .08 percent or more. You were sentenced to 48 hours in jail under a weekend work program, fined, ordered not to drink alcohol in excess, not to drive any motor vehicle unless lawfully licensed and insured, and to attend and complete DUI school. On

9 March 1992, you were counseled concerning your DUI and warned that further misconduct could result in administrative discharge action. On 14 May 1992, you were the subject of an Alcohol Abuse Screening Evaluation. At that time, you acknowledged heavy drinking for five years with morning shakes and blackouts. A medical officer evaluation you as being alcohol dependent and recommended inpatient Level III alcohol rehabilitation treatment. On 29 May 1992, you received nonjudicial punishment (NJP) for disobeying a lawful order by wrongfully driving a car on base after receiving an order not to do so. On 10 June 1992, you were notified of administrative discharge action by reason of civil conviction, commission of a serious offense, and a pattern of misconduct. After being afforded your procedural rights, you elected to have your case heard before an administrative discharge board (ADB). On 7 August 1992, the ADB found you committed misconduct due to civil conviction, commission of a serious offense, and a pattern of misconduct. The ADB recommended that you be separated and receive an Other Than Honorable (OTH) discharge. On 10 August 1992, your defense counsel submitted a Letter of Deficiency regarding your ADB to the separation authority via your commanding officer (CO). On 24 September 1992, your CO forwarded your case to the separation authority concurring with the ADB's finding and recommendation for an OTH discharge. However, based on your Certificate of Release or Discharge from Active Duty (DD Form 214), on 20 November 1992, you received a General (Under Honorable Conditions) discharge.

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 was suffering from Post-Traumatic Stress Disorder during your service. The AO stated in pertinent part:

In 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. Post-service, he has received diagnoses for PTSD and MDD that the VA has determined are service-connected. Although it is possible that PTSD could contribute to increased alcohol consumption, there is not sufficient information to establish a nexus with his misconduct, as he reported problematic alcohol consumption prior to entry into service. Additional records (e.g., post service mental health records describing the Petitioner's diagnosis, symptoms, and their specific link to his misconduct) are required to render an alternate opinion.

The AO concluded, “[B] on the available evidence, it is my clinical opinion that there is post-service evidence that he 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 statement that you suffered from undiagnosed PTSD from a physical assault while in the Navy during your first enlistment. Further, you state that you have been rated 100 percent disabled with service-connected conditions by the Department of Veterans Affairs (DVA) and your PTSD led to your downward spiral in your military career. Finally, you provided supporting documentation that included a detailed personal statement, a psychological assessment from 2012, and excerpts from your military record. 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 civil conviction and NJP, outweighed these mitigating factors. In making this finding, the Board

considered the seriousness of your alcohol related misconduct. The Board also noted that it appears you already received significant mitigation of your conduct when the Navy assigned you a General (Under Honorable Conditions) characterization for conduct that normally qualifies for an OTH characterization. Additionally, absent a material error or injustice, the Board declined to summarily upgrade a discharge solely for the purpose of facilitating VA benefits, or enhancing educational or employment opportunities. Finally, the Board concurred with the AO that there is insufficient evidence that your misconduct could be attributed to PTSD. As a result, the Board concluded that the negative aspects of your service outweighed the positive aspects and continue to support a General (Under Honorable Conditions) characterization. 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 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,

5/6/2022

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Executive Director

Signed by: █