



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: 978-22
Ref: Signature Date

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Dear Petitioner:

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 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 Board waived the statute of limitation 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 10 June 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 to 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 the advisory opinion (AO) furnished by a qualified mental health provider, which was previously provided to you. You were afforded an opportunity to submit a rebuttal to the AO, but did not.

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

You enlisted in the Navy and began a period of active service on 4 March 2008. Less than 60 days later, you were counseled and issued warnings regarding potential separation for driving under the influence of alcohol, running a stop light, making an illegal turn, driving at excessive speed, and snorkeling without a dive flag. Following a second alcohol-related incident, you were investigated for suspected violations of Article 117, provoking speech or gestures, and Article 134, drunk and disorderly conduct; however, those charges were ultimately dismissed. Although

you were screened for alcohol abuse and ultimately attended IMPACT alcohol rehabilitation treatment, you had a third alcohol-related incident for which you received nonjudicial punishment (NJP), on 7 April 2009, for violations of Article 86, absence without leave, Article 108, damage to military property, and Article 134, drunk and disorderly conduct. As a result of your post-rehabilitation alcohol-related incident, you were processed for administrative separation, via notification procedures, due to alcohol rehabilitation failure, and discharged from the Navy, on 29 July 2009, with a General (Under Honorable Conditions) 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 contention that you developed alcohol dependence after enlisting which was not adequately rehabilitated by a one-week training course, resulting in your relapse and discharge. Additionally, you describe that you have since sought and maintained sobriety via a civilian residential treatment program, and you now own a business and assist veterans struggling with substance abuse. For purposes of clemency consideration, the Board noted you provided supporting documentation describing completion of a post-discharge addiction treatment program but no advocacy letters.

Because you contend a mental health condition, the Board also considered the AO, which noted in pertinent part:

During military service, the Petitioner was diagnosed with an alcohol use disorder, which preexisted military service given pre-service behavior. 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. There is no evidence that the Petitioner was not aware of the potential for misconduct when he began to drink or was not responsible for his behavior. Although his complete service medical record was not available for review, among available evidence there were no concerns raised of another mental health condition that would have warranted a referral for evaluation. Postservicely, he has received additional treatment for alcohol use disorder and provided no evidence of another mental health condition. Additional records (e.g., post-service medical 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]ased on the available evidence, it is my clinical opinion that there is insufficient evidence of a mental health condition that may be attributed to military service. There is insufficient evidence that his misconduct could be attributed to a mental health condition other than his diagnosed alcohol use disorder."

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 NJP and counseling, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact you were afforded rehabilitation treatment. In addition, the Board concurred with the AO that your misconduct could not be attributed to a mental health condition. Finally, the Board considered that you were

discharged under honorable conditions for alcohol rehabilitation treatment failure notwithstanding your repeated alcohol-related misconduct and your commission of serious offenses. As a result, in the Board's opinion, you already received a large measure of mitigation and clemency. Therefore, although you presented some evidence of post-service clemency matters, the Board concluded that the potentially mitigating factors you submitted for consideration at this time are insufficient to outweigh your alcohol rehabilitation failure and alcohol-related misconduct. 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, the Board determined that your request does not warrant relief.

You are entitled to have the Board reconsider its decision upon the 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 is attached 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,

6/14/2022

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Executive Director

Signed by: █