



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: 1320-22
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.

Although you did not file your application in a timely manner, the statute of limitations 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 10 August 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)/mental health condition (MHC) (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 12 April 2022, which was previously provided to you. Although you were provided an opportunity to respond to the AO, you chose not to do so.

After two period of honorable service, you reenlisted in the Navy on 3 September 1997. According to the information in the record. On 15 April 1999, civil authorities convicted you of driving under the influence (DUI). Subsequently, you entered the Level III Alcohol Rehabilitation Program. On 22 March 00, you received a warning counseling on your failure to meet the Navy's Family Care Policy. On 9 August 2000, you received non-judicial punishment (NJP) for two specifications of failure to obey a lawful order or regulation, drunken or reckless driving, disorderly conduct, and child neglect. Based on your alcohol incident, you were deemed a Level Three Alcohol Rehabilitation Program failure and notified of pending administrative separation action by reason of alcohol rehabilitation failure. After electing to waive your rights, your commanding officer (CO) forwarded your package to the separation authority (SA) recommending your discharge with a General (Under Honorable Conditions) characterization of service. The SA approved the CO's recommendation and, on 25 August 2000, you were discharged.

Unfortunately, the documents pertinent to your administrative separation are incomplete in your official military personnel file (OMPF). Notwithstanding, the Board relies on a presumption of regularity to support the official actions of public officers and, in the absence of substantial evidence to the contrary, will presume that they have properly discharged their official duties.

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 contention that you were suffering from unrecognized mental health condition, which contributed to your misconduct. For purposes of clemency consideration, the Board noted you did not provide supporting documentation describing post-service accomplishments or advocacy letters.

As part of the Board's review, a qualified mental health professional reviewed your request and provided the Board with an AO on 12 April 2022. The mental health professional stated in pertinent part:

During military service, the Petitioner was diagnosed with alcohol use disorder, for which he received treatment. 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, there is no evidence that he was not aware of the potential for misconduct when he began to drink or was not responsible for his behavior. Throughout his military processing, there were no concerns raised of another mental health condition that required evaluation. Unfortunately, he has provided no medical evidence in support of his claims. 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 other than alcohol use disorder that may be attributed to military service. There is insufficient evidence that his misconduct could be attributed to a mental health condition other than alcohol use disorder."

Based upon this review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined your misconduct, as evidenced by your civil conviction, NJP, and alcohol rehabilitation failure, outweighed the potential mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the negative impact it had on the good order and discipline of your command. Further, the Board took into consideration that the Navy attempted to treat your alcohol use disorder and provided you an opportunity to rehabilitate your conduct. Additionally, the Board considered that the Navy already provided you a large measure of clemency by not processing you for a commission of a serious offense; a basis for separation that would have qualified you for an Other Than Honorable characterization of service. Finally, the Board concurred with the AO that there is insufficient evidence that your in-service misconduct could be attributed to a mental health condition. As a result, the Board concluded that significant negative aspects of your service outweigh the positive aspects and continues to warrant a General (Under Honorable Conditions) characterization of service. 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,

8/16/2022

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Executive Director

Signed by: █