



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: 1449-22
Ref: Signature Date



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 20 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 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 and licensed clinical psychologist which was previously provided to you. You were afforded an opportunity to submit a rebuttal to the AO, which was received 30 March 2022.

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.

Prior to entering military service, you had a drug-related arrest and admitted to using marijuana; however, this information was legally determined as not being adverse for entry to military service. You enlisted in the Navy and began a period of active service on 22 August 2008. You

received nonjudicial punishment (NJP), on 7 April 2009, for a violation of Article 112 due to being drunk on duty. You were counseled on retention and given warnings that further misconduct could result in administrative discharge. You entered an intensive alcohol abuse treatment program which you completed on 30 October 2009; however, you had another alcohol related offense the next day and, on 2 November 2009, you received a second NJP for Articles 92 and 134 due to insubordinate conduct by disobeying a lawful order from a Chief Petty Officer who directed you to sit down outside of medical due to your disorderly conduct and drunkenness. You were issued notification procedures for administrative separation due to pattern of misconduct, commission of a serious offense, and alcohol rehabilitation failure, and you were discharged under approval of local authority with a General (Under Honorable Conditions) (GEN) characterization of service on 12 November 2009.

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: that you suffered depression and anxiety from childhood trauma, to include post-traumatic stress disorder (PTSD); that your mental health conditions interfered with your ability to adapt to military life; that your substance abuse and alcohol-related misconduct resulted from your mood disorder, depression, and anxiety, which you believe could have been treated better if you had been able to speak about your problems to figure out why you were drinking; and, finally, that you were targeted by your command and treated unfairly. In support of your contentions, you submitted post-discharge records of civilian rehabilitation treatment and medical care reflecting your diagnoses and treatment history. For purposes of clemency consideration, the Board noted you did not provide supporting documentation describing post-service accomplishments, or advocacy letters.

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

Petitioner's OMPF did contain evidence of a diagnosis of an Alcohol Use Disorder, for which he received treatment. Evidence submitted by Petitioner further supported a diagnosis for Alcohol Use Disorder, as well as a mood disorder and depressive disorder. Petitioner did not provide clarifying information about the trauma related to his PTSD or information about his MHC (i.e., when the trauma occurred, what the trauma was, MHC symptoms in-service). The lack of clarifying information made available did not provide enough markers to establish an onset and development of mental health symptoms or identify a nexus with his misconduct.

The AO concluded, "[b]ased on the available evidence, it is my considered clinical opinion there is sufficient evidence Petitioner exhibited behaviors associated with an Alcohol Use Disorder during his military service. The preponderance of available objective evidence failed to establish his Alcohol Use Disorder was the result of PTSD or other mental health condition at the time of his military service or his inservice misconduct could be mitigated by PTSD or other mental health condition."

In rebuttal to the AO, you submitted evidence of a civilian psychiatric evaluation which reflects

that you were diagnosed with depressive disorder with an onset of age 31 and Bipolar I disorder with an onset of age 33.

Based on their review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your NJPs, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact you completed rehabilitation treatment prior to relapsing into further misconduct. With respect to your contentions that you believe you needed more thorough treatment, the Board found that you participated in an intensive residential rehabilitation program during your active military service to assist in your recovery but continued your alcohol abuse immediately upon release. Additionally, to the extent that you contend you were targeted or treated unfairly, the Board specifically observed the opposite. In fact, your service records reflect that, in spite of your serious and continued alcohol-related misconduct, your command intentionally notified you that the worst characterization of service you could receive was under honorable conditions and separated you under local authority; without question, this decision by your commanding officer protected you from the very likely jeopardy of an other than honorable characterization if the command had elected to notifying you of separation via board procedures and, therefore, does not support a finding that you were targeted or treated unfairly. Finally, the Board concurred with the AO that the preponderance of available objective evidence failed to establish your Alcohol Use Disorder was the result of PTSD or other mental health condition at the time of your military service or that your inservice misconduct could be mitigated by PTSD or other mental health condition. While the Board considered your rebuttal evidence, they noted the Depressive and Bipolar Disorders were not diagnosed until well after your release from active duty. As a result, the Board concluded significant negative aspects of your service outweighed the positive and continue to warrant a GEN 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, 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,

6/9/2022

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Executive Director
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