



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: 1874-22
Ref: Signature Date

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Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to 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.

Because your application was submitted with new evidence not previously considered, the Board found it in the interest of justice to review your application. Your current request has been carefully examined by a three-member panel of the Board, sitting in executive session on 18 July 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 25 August 2017 guidance from the Office of the Under Secretary of Defense for Personnel Readiness (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). As part of the Board's review, a qualified mental health professional reviewed your request and provided the Board with an Advisory Opinion (AO) on 24 May 2022. You were provided an opportunity to respond to the AO, but chose not to do so.

You enlisted in the U.S. Navy and began a period of active duty on 8 December 1986. On 11 December 1986, you were briefed on the Navy's drug and alcohol abuse policy. On 19 December 1986, through urinalysis testing, administrative remarks document you tested positive for marijuana. As a result, you were identified as a drug abuser and placed on a drug surveillance regiment program. On 11 November 1987, you received your first nonjudicial punishment (NJP) for failing to obey a lawful order, resisting apprehension, and drunk and disorderly conduct. Despite these infractions, you were retained in the naval service and advised that any further violations of the uniform code of military justice or conduct resulting in civil conviction could result in an administrative separation under other than honorable (OTH) conditions. On 20 April 1989, you received a second NJP for attempted larceny, destruction of government property, provoking speeches, assault consummated by a battery, and, drunk and disorderly conduct. On 5 June 1989, you reported to alcohol rehabilitation treatment. However, on 28 June 1989,

you were returned to your command as a treatment failure. On 13 July 1989, you received a third and final NJP as a result of being absent from your unit.

On 14 July 1989, you were notified of your pending administrative separation due to alcohol rehabilitation failure, pattern of misconduct (POM), and commission of a serious offense (COSO); at which time you waived all of your procedural rights. Subsequently, on 7 August 1989, you were offered and refused in-patient treatment at a Department of Veterans' Affairs hospital. Ultimately, on 8 August 1989, you were discharged with an Other Than Honorable (OTH) characterization of service by reason of POM.

You later submitted a request via the Naval Discharge Review Board (NDRB) to have your case reviewed and your discharge upgraded to a General (Under Honorable Conditions) characterization. On 22 January 1996, the NDRB found relief was unwarranted as your discharge was appropriately issued.

Post Navy discharge, you enlisted and served with the Army National Guard. You provided DD Form 214's that indicate you had two separate periods of active duty while with the National Guard and that you served in support of Operations Iraqi Freedom and Freedom's Sentinel. Your DD Form 214's also document a number of medals received during your service.

In addition to your NDRB application, you also petitioned this Board for an upgrade to your discharge. However, your application was denied based on the statute of limitations on 16 October 2014.

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 contentions that you incurred PTSD during military service, which might have mitigated your discharge character of service. Further, you contend, (1) you were a young man who did not understand the ramifications of your actions, (2) post discharge from the Navy you served honorably in the Army National Guard for the past 23 years, (3) you have served two combat tours (Operation Iraqi Freedom/Operation Freedom Sentinel, as an enlisted Army Aviator Air Crewman, (3) you have received many citations in your career, (4) you were given a second chance and served your country honorably and faithfully to the best of your ability and in a time of war as an American Soldier, (5) it has been more than 20 years and, unfortunately, and you did not know there was a time limit on submitting an appeal to your discharge. For purposes of clemency consideration, the Board noted you provided DD Form 214's and performance evaluations describing post-service accomplishments but no advocacy letters.

In connection with your assertion that you incurred a mental health condition which might have mitigated your discharge character of service, a qualified mental health professional reviewed your request for correction to your record and provided the Board with the AO. The AO stated in pertinent part:

During his Navy service, the Petitioner was diagnosed with an alcohol use disorder. 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 some of his misconduct could be attributed to effects of excessive alcohol consumption, there is no evidence he was unaware of the potential for misconduct when he began to drink or was not responsible for his behavior. Post-service, the VA has determined service connection for PTSD, but there is no information regarding this diagnosis (e.g., symptoms, purported trauma, etc.) to link it to his Navy service, particularly given his later periods of active service in the ANG (Army National Guard). Additional records, (e.g., post-service mental health records describing the

Petitioner's diagnosis, symptoms, and their specific link to his misconduct) would aid in rendering an alternate opinion.

The AO concluded, "[b]ased on the available evidence, it is my clinical opinion that there is insufficient evidence of a diagnosis of PTSD that may be attributed to Navy service. There is insufficient evidence that his misconduct could be attributed to PTSD."

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 drug use and NJPs, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct that included multiple alcohol related incidents and violence. Further, the Board took into consideration that you failed alcohol rehabilitation treatment and committed misconduct immediately afterwards. This led the Board to conclude your conduct showed a complete disregard for military authority and regulations. 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 your conduct constituted a significant departure from that expected of a Sailor and continues to warrant an OTH characterization. While the Board commends your post-discharge good character and service to this country, 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, _____

8/3/2022

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Deputy Director

Signed by: █