



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

■
Docket No: 2373-22
Ref: Signature Date

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Dear Petitioner:

This is in reference to your application for correction of your cousin's naval record pursuant to Section 1552 of Title 10, United States Code. After careful and conscientious consideration of relevant portions of his 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 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 27 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 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) (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 professional dated 17 May 2022 and your response to the AO.

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

■, hereinafter referred to as Petitioner, enlisted in the Navy and began a period of active duty on 9 November 1961. On 27 August 1962, Petitioner received non-judicial punishment (NJP) for consuming alcoholic beverages under the age of 21. On

13 September 1962, Petitioner was convicted by a summary court-martial (SCM) of failure to obey a lawful order from a superior noncommissioned officer (NCO) and disrespectful in language towards a superior NCO. On 7 March 1963, Petitioner received NJP for again consuming alcoholic beverages under the age of 21. On 9 September 1963, Petitioner was convicted by a SCM of disrespectful in language toward superior NCO, failure to obey a lawful order, and being drunk in a public place. During the period from 25 September 1964 to 14 March 1966, Petitioner received four instances of NJP. Petitioner's offenses were drunk onboard the naval air station and three instances of conduct of a nature to bring discredit upon the Armed Forces. On 28 March 1966, at the expiration of Petitioner's active obligated service, he was issued a Armed Forces of the United States Report of Transfer or Discharge (DD Form 214) that annotated his characterization of service as General (Under Honorable Conditions). Petitioner's final conduct average was 2.78.

In your petition, the Board carefully considered all potentially mitigating factors to determine whether the interests of justice warrant relief in this case in accordance with the Wilkie Memo. These included, but were not limited to, your desire to have the Petitioner's discharge character of service upgraded and contentions that: (1) the Petitioner incurred an alcohol use disorder during his military service, which contributed to the circumstances of his separation from service; (2) Petitioner had many unfair, difficult and challenging life issues and struggles to deal with that affected his life and attitude toward life; (3) there was no evidence found in Petitioner's record of any medical screening for alcoholism or any addictions while completing his enlistment; and (4) there was no evidence found that the Navy offered or required professional medical care, counseling or treatment while Petitioner was on active duty, despite his obvious pattern of developing or established alcoholism that led several times to his behavioral problems. For purposes of clemency consideration, the Board noted your submission of supporting documentation on behalf of the Petitioner.

As part of the Board's review, a qualified mental health professional reviewed your request and provided the Board with an AO on 17 May 2022. The AO noted in pertinent part:

During military service, the Petitioner was appropriately referred for psychological evaluation and properly evaluated, with no diagnosis assigned. Although there is behavioral evidence of alcohol use disorder in the record, 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 he was unaware of the potential for misconduct when he began to drink or was not responsible for his behavior. Unfortunately, his personal statement is not sufficiently detailed to establish an alternate clinical diagnosis and there is no evidence of another mental health condition. 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 mental health condition that may be attributed to military service, other

than a possible alcohol use disorder. There is insufficient evidence that his misconduct may be attributed to a mental health condition, other than a possible alcohol use disorder.”

In response to the AO, you provided rebuttal arguments to the opinions made in the AO and reiterated your basis for relief that included assertions that Petitioner developed an alcohol abuse problem while in the Navy and did not receive adequate assistance to deal with it.

Based upon this review, the Board concluded your potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that Petitioner’s misconduct, as evidenced by his six NJPs and two SCM convictions, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of Petitioner’s misconduct and concluded it showed a complete disregard for military authority and regulations. Further, the Board noted that Petitioner’s conduct scores were insufficient to qualify for a fully Honorable characterization of service. At the time of Petitioner’s service, a conduct mark average of 3.0 was required to be considered for a fully Honorable characterization of service; a minimum mark Petitioner failed to achieve due to his extensive record of misconduct. Furthermore, notwithstanding your arguments, the Board concurred with the AO that there is insufficient evidence of a mental health condition that may be attributed to military service, other than a possible alcohol use disorder, and there is insufficient evidence that Petitioner’s misconduct may be attributed to a mental health condition, other than a possible alcohol use disorder. While the Board carefully deliberated on the issue of whether Petitioner received adequate assistance for his possible alcohol abuse disorder, ultimately, they concluded he was responsible for his misconduct that formed the basis for his General (Under Honorable Conditions) characterization of service. The Board also noted, despite his extensive record of misconduct, Petitioner was given multiple opportunities to correct his behavior and allowed to continue to the end of his obligated service rather than face administrative separation with the potential for an Other Than Honorable discharge. Based on these factors, the Board concluded Petitioner already received a large measure of clemency from the Navy and was not persuaded by the argument that he deserves an Honorable discharge because he almost qualified for one based on his conduct average or reformed his behavior in the years after his discharge. As a result, the Board determined that significant negative aspects of Petitioner’s active service outweighed the positive aspects and continues to warrant a General (Under Honorable Conditions) characterization. While the Board commended Petitioner’s post-discharge good character, after applying liberal consideration, the Board did not find evidence of an error or injustice that warrants upgrading Petitioner’s 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, _____

8/10/2022



Executive Director

Signed by: █