



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

█  
Docket No: 2634-22  
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 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 15 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 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, 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 27 June 2022, which was previously provided to you. Although you were afforded an opportunity to submit an AO rebuttal, you chose not to do so.

You enlisted in the Navy and began a period of active duty on 18 February 1992. On 1 October 1992, you received nonjudicial punishment (NJP) for two instances of failure to report to appointed place of duty, failure to obey a lawful order, and incapacitated for duty due to alcohol indulgence. On the same date, you were counseled for your previous NJP violations and advised that failure to take corrective action could result in administrative separation. On 30 October 1992, you entered Level II drug and alcohol treatment. On 1 November 1992, your commanding officer (CO) advised you that failure to cooperate or complete Level II drug and alcohol treatment

will constitute grounds for administrative separation. On 4 February 1993, you were apprehended by civil authorities and charged with grand theft auto, burglary, and larceny. On 25 June 1993, you were sentenced by civil authorities to be placed on the pre-trial intervention program, make full restitution to the victims, perform 20 hours of community service work, and seek mental health and drug evaluation. On 26 August 1993, you received a second NJP for failure to obey a lawful order by wrongfully possessing alcohol beverages in the barracks. On 31 August 1993, you were notified of the initiation of administrative separation proceedings by reason of misconduct and drug and alcohol abuse rehabilitation failure. On 2 September 1993, you elected to waive all your procedural rights. On 7 October 1993, your CO recommended a General (Under Honorable Conditions) discharge characterization of service by reason of misconduct due to pattern of misconduct, and drug and alcohol abuse rehabilitation failure. On 27 October 1993, the discharge authority approved and ordered an Other Than Honorable (OTH) discharge characterization of service by reason of misconduct due to pattern of misconduct. On 5 November 1993, you were discharged.

You previously applied to this Board for a discharge upgrade. On 8 March 2016, this Board denied your request.

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 for a discharge upgrade and your contentions that you had a mental disability which led you to drink alcohol, you made poor decisions as a result of your alcohol abuse, and you were declared disabled as a result of your alcohol addiction and mental health related issues. For purposes of clemency consideration, the Board noted you did provide five character letters of support describing post-service accomplishments.

As part of the Board's review, the Board considered the AO. The AO stated in pertinent part:

The Petitioner in-service personnel and medical records did not contain a formal diagnosis of Post-Traumatic Stress Disorder (PTSD), Traumatic Brain Injury (TBI), or a mental health condition other than alcohol use disorder. There is post-service evidence of a head injury in 1990, prior to his entry into Naval service. However, his pre-service physical did not indicate the presence of any medical symptoms that would disqualify him from military service. Throughout his disciplinary processing, there were no concerns raised that would have warranted a referral for additional evaluation, and he did not report any mental health concerns upon separation. There is post-service evidence of a diagnosis of bipolar disorder. While it is possible that he was experiencing unrecognized prodromal symptoms of bipolar disorder during military service, it is difficult to attribute any of his misconduct to a condition other than alcohol use disorder, given the depressive effect of alcohol. Additionally, there is no evidence that he was unaware of his misconduct or not responsible for his behavior, as his conflicting statements following arrest for the car theft indicate that he was aware of right and wrong.

The AO concluded, “[b]ased on the available evidence, it is my clinical opinion that there is post-service evidence that Petitioner may have sustained a TBI prior to military service, but there is insufficient evidence that this event may have contributed to his performance in service. There is insufficient evidence of a diagnosis of PTSD or another mental health condition that may be attributed to military service. There is insufficient evidence that the circumstances surrounding his separation could be attributed to TBI or another 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 NJPs and civilian conviction, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the likely negative effect it had on the good order and discipline of your command. Further, the Board took into consideration that you attended alcohol rehabilitation treatment and warned of the consequences of further misconduct. Additionally, absent a material error or injustice, the Board declined to summarily upgrade a discharge solely for the purpose of facilitating veterans’ benefits, or enhancing educational or employment opportunities. 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 employment accomplishments, 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 that your request does not merit 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 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,

9/5/2022

█