



**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: 2777-22  
Ref: Signature Date



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.

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 25 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 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 review, a qualified mental health professional reviewed your request and provided the Board with an Advisory Opinion (AO) on 9 June 2022. You were provided an opportunity to respond to the AO, but chose not to do so.

You enlisted in the Navy and began a period of active duty on 25 July 1988. On 16 May 1989, you were found at a summary court-martial (SCM) guilty of unauthorized absence (UA), larceny and wrongful appropriation, drunken or reckless driving, and false official statement. You were sentenced to confinement at hard labor for 14 days, forfeiture of \$466.00 pay per month for one month and reduction in rank to E-1. On 28 January 1991, you received nonjudicial punishment (NJP) for a three day period of UA. On 28 February 1991, you received a second SCM for fraud against the United States and were sentenced to be reduced in rank to E-1 and forfeiture of \$400.00 pay per month for one month. On 29 March 1991, you were notified of administrative separation processing for reason of pattern of misconduct (POM) and commission of a serious

offense (COSO), at which time you elected your right to consult with counsel and waived your right to have your case heard before an administrative discharge board. Your CO subsequently recommended your separation with an Other Than Honorable (OTH) characterization of service. In April 1991, the separation authority directed you be discharged with an OTH by reason of COSO. On 22 April 1991, you were so discharged.

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 characterization of service, change your separation reason to “convenience of the government,” and contentions that you incurred a mental health condition as a result of military service. In addition, the Board considered your assertions, “At the time of my discharge, I suffered from an alcohol abuse dependence problem. Since my discharge, I have corrected my dependency for alcohol with assistance of family, friends, and God. I have worked hard to be a positive role model for my children and those who know me. I have been employed with the same company for 30 years and I always strive in doing an excellent job. During this time, I have assisted my wife of over 30 years in raising our two sons and also managed to graduate from University. I hope you find my actions post military deserving of clemency and a discharge upgrade. Until recently I was not aware the BCNR was available to update my military discharge.” For purposes of clemency consideration, the Board noted you provided supporting documentation describing post-service accomplishments and advocacy letters.

Based on your assertion that you incurred a mental health condition as a result of military service, 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 military service, he was diagnosed with an alcohol use disorder (AUD) and a personality disorder. Prior to separation, he reported that his AUD had resolved. His personality disorder diagnosis was based on observed behaviors and performance during his period of service, the information he chose to disclose, and the psychological evaluation performed by mental health clinician over multiple visits. A personality disorder diagnosis is pre-existing to military service by definition, and indicates lifelong characterological traits unsuitable for military service. While some of his misconduct could be attributed to his alcohol use disorder, there is no evidence to support his in-service misconduct could be attributed to his alcohol use disorder, there is no evidence to support that his in-service misconduct could be attributed to another mental health condition, or that he was unaware of his misconduct or not responsible for his actions. 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 considered medical opinion that there is insufficient evidence of a mental health condition that may be attributed to military

service. There is insufficient evidence that his misconduct could be attributed to a mental health condition.”

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 SCMs and NJP, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and found that your conduct showed a complete disregard for military authority and regulations. In addition, the Board took into consideration your misconduct included several incidents involving theft and dishonesty. This led the Board to further consider the likely negative effect your conduct had on the good order and discipline of the command. Finally, the Board concurred with the AO that there is insufficient that your misconduct could be attributed to a mental health condition. 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 commended your post-discharge good character, after applying liberal consideration, the Board did not find evidence of an error or injustice that warrants upgrading your characterization of service, changing your narrative reason for separation, or granting clemency in your case. Accordingly, given the totality of the circumstances, the Board determined that you 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,

8/8/2022

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