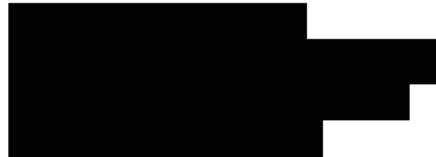




DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
701 S. COURTHOUSE ROAD, SUITE 1001
ARLINGTON, VA 22204-2490

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Docket No: 2816-22
11755-12
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.

Because your application was submitted with new evidence not previously considered, the Board found it in the interest of justice to review your application. A three-member panel of the Board, sitting in executive session, considered your application on 17 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 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 25 August 2017 guidance from the Office of the Under Secretary of Defense for Personnel and 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). The Board also considered the advisory opinion (AO) furnished by a qualified mental health professional, dated 30 June 2022, and your response to the AO.

You previously applied to this Board for an upgrade to your characterization of service and were denied relief on 7 August 2013.

You enlisted in the Navy and began a period of active duty on 29 December 1986. On 10 June 1988 and 20 January 1989, you received non-judicial punishment (NJP) for two periods of unauthorized absence (UA) totaling eight days. Additionally, on 20 January 1989, you were issued an administrative remarks (Page 13) counseling concerning deficiencies in your

performance and conduct. You were advised that any further deficiencies in your performance and/or conduct may result in disciplinary action and in processing for administrative separation. On 6 October 1989 and 3 November 1989, you received your third and fourth NJPs for dereliction in the performance of duty and two specifications of UA. Additionally, on 3 November 1989, you were issued your second Page 13 counseling concerning deficiencies in your performance and conduct. On 21 December 1989 and 22 June 1990, you received your fifth and sixth NJP for UA, absence from your appointed place of duty, and four Article 92 violations. Subsequently, you were notified that you were being recommended for administrative discharge from the Navy by reason of misconduct due to pattern of misconduct. You were advised of, and waived your procedural rights to consult with military counsel and to present your case to an administrative discharge board (ADB). Your commanding officer (CO) then forwarded your administrative separation package to the separation authority (SA) recommending your administrative discharge from the Navy with an Other Than Honorable (OTH) characterization of service. The SA approved the recommendation for administrative discharge, and directed your OTH discharge from the Navy. On 14 August 1990, you were discharged from the Navy with an OTH characterization of service by reason of misconduct due to pattern of misconduct.

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 character of service, change your narrative reason for separation, separation code and reenlistment code. The Board also considered your contentions that: (1) your conduct leading to your discharge was the result of anxiety, depression, and subsequent alcohol dependence that mitigates your discharge and warrant relief; (2) your situation should compel the Board to grant relief to remedy the injustice of your discharge; (3) in accordance with the standards set forth in the Wilkie Memo, you deserve forgiveness, and a second chance in the form of granting your requested relief; and (4) you have demonstrated a strong desire to restore the life you had when you began your voluntary military service; however, you are still impacted by what happened to you in service and the negative implications of your OTH discharge. For purposes of clemency consideration, the Board noted you did not provide supporting documentation describing post-service accomplishments or advocacy letters.

As part of the Board's review, a qualified mental health professional reviewed your request and provided the Board with an AO on 30 June 2022. The AO noted in pertinent part:

During military service, the Petitioner was diagnosed with an alcohol use disorder and a mild situational anxiety disorder. Problematic alcohol use is incompatible with military readiness and discipline. There is no evidence he was unaware of his misconduct or not responsible for his behavior. He has provided no additional evidence of another mental health diagnosis. Unfortunately, his statement is not sufficiently detailed to establish a nexus with his misconduct. Additional records (e.g., 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 clinical opinion there is evidence of a mental health condition that may be attributed to military service (anxiety disorder). There is insufficient evidence his misconduct could be attributed to a mental health condition.”

In response to the AO, you provided a rebuttal statement and reiterated your basis for relief and your belief that that your records clearly demonstrate that your misconduct was the direct result of your attempt to self-medicate your anxiety and depression.

Based upon this review, the Board concluded your potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your six NJPs, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and concluded that it showed a complete disregard of military authority and regulations. The Board also considered the negative impact your conduct likely had on the good order and discipline of your command. Additionally, the Board concurred with the AO and determined that while there is evidence of a mental health condition that may be attributed to military service, there is insufficient evidence that your misconduct could be attributed to a mental health condition. As pointed out in the AO, there is no evidence that you were unaware of your misconduct or not responsible for your behavior, and that your statement is not sufficiently detailed to establish a nexus with your misconduct. Finally, 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. As a result, the Board determined your conduct constituted a significant departure from that expected of a Sailor and continues to warrant an OTH characterization. After applying liberal consideration, the Board did not find evidence of an error or injustice that warrants changing your characterization of service, narrative reason for separation, separation code, reenlistment code or granting clemency in your case. 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,

8/31/2022

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Executive Director

Signed by: █