



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

██████████
Docket No: 2922-22
Ref: Signature Date

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Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to 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 Board waived the statute of limitation 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 29 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 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) of a qualified mental health provider, which was previously provided to you. You were afforded an opportunity to submit a rebuttal but chose not to do so.

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

You enlisted in the Navy and began a period of active duty on 26 November 2001. Your evaluations from 2002 reflect that your personal responsibility and conduct while ashore needed improvement. On 14 March 2003, you completed Level 2 outpatient alcohol abuse treatment. You received nonjudicial punishment (NJP), on 12 March 2004, for a violation of Article 92, failure to obey a lawful general order, by wrongfully concealing an ice pick in your front left pocket while transiting the base's main gate. At the time of the offense, you also had a blood

alcohol content of .23, resulting in alcohol rehabilitation failure. Your commanding officer's (CO's) report of the incident noted that you did not want further treatment because you did not want to abstain from alcohol. You were subsequently processed for administrative separation under notification procedures for the reasons of alcohol rehabilitation failure and misconduct due to commission of a serious offense, with a least favorable characterization of General (Under Honorable Conditions) (GEN). Your CO's recommendation noted that your military bearing and ability to perform daily tasks remained commendable but that your inability to refrain from alcohol made you a risk. You were subsequently discharged, on 6 April 2004, with a GEN characterization of service for alcohol rehabilitation failure.

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 your contentions that you experienced significant personal and family problems during your military service which affected your ability to serve, especially after the death of your father. For purposes of clemency consideration, the Board noted you did not provide supporting documentation describing post-service accomplishments, or advocacy letters.

Because you contend that post-traumatic stress disorder (PTSD) or another mental health (MH) condition affected your discharge, the Board also considered the AO. The AO stated in pertinent part:

During military service, the Petitioner was diagnosed with an alcohol use disorder, and declined treatment. 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 his misconduct or not responsible for his behavior. He has provided no records in support of his claims of PTSD or another mental health condition. Unfortunately, his statement is not sufficiently detailed to establish clinical symptoms or a nexus with his misconduct. The loss of a loved one in itself is insufficient to establish a mental health condition. 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 clinical opinion that 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 his misconduct could be attributed to PTSD or another 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 alcohol rehabilitation failure, as evidenced by your alcohol incident of 3 March 2004, outweighed these mitigating factors. In making this finding, the Board considered the fact you were offered and completed alcohol rehabilitation treatment prior to your relapse. Further, the Board took into consideration your refusal for further alcohol rehabilitation treatment. Finally, the Board concurred with the AO that there is insufficient evidence that your misconduct could be attributed to PTSD or another mental health condition. As a result, the Board concluded significant negative aspects

of your active service outweigh the positive aspects and continues to warrant a GEN characterization. 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 is attached 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,

8/11/2022

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Executive Director
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