



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: 3093-22
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 18 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). The Board also considered an advisory opinion (AO) from a qualified mental health professional, which was previously provided to you. Although afforded an opportunity to submit a rebuttal, you did not do so.

You enlisted in the Navy and began a period of active duty on 30 November 1977. On 7 July 1978, you received your first nonjudicial punishment (NJP) for three specifications of unauthorized absence totaling 27 days. You were issued administrative counseling regarding these deficiencies and advised that further misconduct of a discreditable nature may be grounds for administrative separation processing for a discharge under Other Than Honorable (OTH) conditions. On 1 August 1978, you were dropped from boiler technician accession school (BT 'A' School) for lack of motivation. On 18 August 1978, you received a second NJP for two specifications of UA, each lasting less than 24 hours. Subsequently, from August through September 1978, you received three additional NJPs for additional infractions of UA, disrespect

in language toward an E-4, and communicating a threat. On 2 October 1978, you were notified of your pending administrative separation as a result of misconduct due to your frequent involvement of a discreditable nature with military authorities, at which time you elected your right to consult with counsel and have your case heard before an administrative discharge board. Subsequently, on 6 October 1978, you commenced a period of UA, while on restriction, which lasted a total of 38 days until you surrendered on 13 November 1978. As a result, on 29 November 1978, you submitted a request for discharge under OTH conditions for the good of the service (GOS) in lieu of trial by court-martial. On 11 December 1978, your commanding officer (CO) favorably endorsed your request and, on 15 December 1978, the separation authority approved your request. On 21 December 1978, 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 discharge and contentions: “During my tenure in the USN, I was an active alcoholic and drug abuser which I attempted to treat by attending inpatient detox and rehabilitation at █. That treatment failed at the time and I was subsequently discharged due to my negative behavior which was secondary to my addiction. I have been sober and in recovery for over three decades and this request is one that I’ve always meant to see through. I regret my actions preceding my discharge and of course wish I had it to do over again. During bootcamp I was appointed Recruit Chief Petty Officer, named Company Honor-man, and received the Navy League Outstanding Recruit Award. For the past 30+ years I have worked in the mental health field, primarily as a mobile outreach mental health crisis services technician, and am currently employed in that capacity by the State of █ in the Office of Adults with Disabilities through the Department of Health and Human Services (DHHS).” The Board also noted your acceptance of responsibility for your actions and your expression of regret. For purposes of clemency consideration, the Board noted you did not provide supporting documentation describing post-service accomplishments, or 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 his military service, the Petitioner was appropriately referred for evaluation and treatment of AUD (alcohol use disorder). Problematic alcohol use in incompatible with military readiness and discipline and considered amenable to treatment, depending on the individual’s willingness to engage in treatment. During military service, he demonstrated an awareness of his misconduct and was deemed responsible for his behavior. 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) are required to render 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 could be attributed to military

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

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 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. The Board also noted that you incurred five NJPs during a period of active service spanning approximately 10 months. Further, the Board concurred with the AO that there is insufficient evidence 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 commends your post-discharge recovery and good character, after applying liberal consideration, the Board did not find evidence of an error or injustice that warrants upgrading your characterization of service by 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 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,

8/5/2022

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Executive Director

Signed by: █