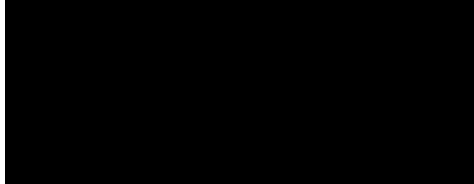




DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
701 S. COURTHOUSE ROAD, SUITE 1001
ARLINGTON, VA 22204-2490

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Docket No: 3563-22
6152-21
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 6 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.

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

You previously applied to this Board for an upgrade to your characterization of service and were denied on 20 December 2021.

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 and contentions that: (1) you incurred an alcohol use disorder as a result of military culture, which contributed to your misconduct; (2) the use of alcohol, your youth, and immaturity impaired your ability to serve; (3) you were not an alcohol rehabilitation failure; (4) you were not properly counseled concerning your discharge, nor did you consent to your discharge; (5) you were not allowed to see a lawyer in deciding whether to give up your right to a Board; (6) your request for your discharge to be withdrawn was not processed or considered; (7) your statement that you submitted on your behalf was not considered; and (8) under current standards, you would receive a less than fully honorable discharge. For purposes of clemency consideration, the Board noted you provided advocacy letters but no supporting documentation describing post-service accomplishments.

As part of the Board's review, a qualified mental health professional reviewed your request and provided the Board with an AO on 6 June 2022. The AO stated in pertinent part:

In-service, the Petitioner was diagnosed with an alcohol use disorder. 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. While it is possible that some of his misconduct could be attributed to effects of excessive alcohol consumption, there is no evidence he was unaware of the potential for misconduct when he began to drink or was not responsible for his behavior. Post service, the Petitioner has provided documentation of a diagnosis of post-traumatic stress disorder (PTSD) that is temporally remote to his military service. Medical records indicate that his PTSD diagnosis may be related in part to Operation Desert Storm, but also describe traumatic incidents in childhood and post-military service. Most of his misconduct predates his deployment or is better accounted for by alcohol use disorder. However, his UA in November 1991 and January 1992 could be related to PTSD avoidance symptoms.

The AO concluded, “[b]ased on the available evidence, it is my considered medical opinion that there is post-service evidence that symptoms of PTSD may have been exacerbated by military service. However, there is insufficient evidence that most of his misconduct could be attributed to PTSD.”

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 two NJPs and civilian conviction, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and concluded your misconduct showed a complete disregard for military authority and regulations. The Board also considered the negative impact your conduct likely had on the good order and discipline of

your command and the discrediting nature of your civilian conviction. Additionally, the Board concurred with the AO and determined that while there is post-service evidence that symptoms of PTSD may have been exacerbated by military service, there is insufficient evidence that most of your misconduct could be attributed to PTSD. As pointed out in the AO, while it is possible that some of your misconduct could be attributed to effects of excessive alcohol consumption, there is no evidence you were unaware of the potential for misconduct when you began to drink or that you were not responsible for your behavior. 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 considered your advocacy letters, 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 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

