



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: 3730-22
Ref: Signature Date

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Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to 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 17 October 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, 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, 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 enlisted in the Navy and began a period of active duty on 12 January 1999. In the summer of 2000, you self-referred and completed Level III inpatient alcohol treatment and began aftercare. On 10 January 2001, you were served court-martial charges for violating Uniform

Code of Military Justice Article 91 (assault of a First Class Petty Officer who was then in the execution of his office) and Article 134 (drunk and disorderly). In accordance with MILPERSMAN 1910-106, you requested a separation in lieu of trial by court martial (SILT). You acknowledged your rights, waived your right to consult with counsel, and acknowledged that if your discharge was under Other than Honorable (OTH) conditions, you may be deprived of veteran's benefits and may encounter substantial prejudice in civilian life. Your commanding officer accepted your SILT request and forwarded your administrative separation package to the separation authority (SA) recommending your administrative discharge from the Navy with an OTH characterization of service. The SA approved the recommendation for administrative discharge and directed your OTH discharge from the Navy by reason of "OTH in Lieu" with a "RE-4" reenlistment code. On 28 March 2001, you were 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 Kurta, Hagel, and Wilkie Memos. These included, but were not limited to, your desire to upgrade your discharge character of service and contention that your alcohol consumption and mental health issues were exacerbated by your friend's suicide and dealing with the aftermath of an aircraft crash, which contributed to your misconduct. 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 process, a qualified mental health professional reviewed your contentions and the available records and issued an AO dated 27 July 2002. The AO noted in pertinent part:

The available records do not provide a diagnosis of PTSD, and support his in-service diagnosis of alcohol use disorder. Problematic alcohol use is incompatible with military readiness and discipline, and there is no evidence he was unaware of the potential for misconduct when he began to drink or was not responsible for his behavior. He has provided no medical evidence in support of his claims. Unfortunately, his personal statement is not sufficiently detailed to establish clinical symptoms or a nexus with his misconduct, particularly given his pre-service problematic alcohol behavior. 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, "it is my considered clinical opinion there is insufficient evidence of a diagnosis of PTSD that may be attributed to military service. There is insufficient evidence 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 the court martial charges preferred on 10 January 2001, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact it involved an assault on a fellow Shipmate. The Board determined that such misconduct is contrary to Navy core values and policy, and posed an unnecessary risk to the

safety of fellow Sailors. The Board highlighted that you requested a SILT, thereby avoiding a possible court martial conviction and punitive discharge. The separation authority granted you significant clemency by accepting your separation in lieu of trial by court martial. In making this finding, the Board concurred with the AO that there is insufficient evidence your misconduct could be attributed to PTSD or another mental health condition. Your SILT request does not mention mental health concerns or the impact of a traumatic or stressful event as the cause of your misconduct. Moreover, the Board observed that you did not submit any clinical documentation or treatment records to support your mental health claims despite a request from BCNR on 23 May 2022 to specifically provide additional documentary material. The Board determined the record clearly reflected that your active duty misconduct was intentional and willful and demonstrated you were unfit for further service. The Board also determined that the evidence of record did not demonstrate that you were not mentally responsible for your conduct or that you should otherwise not be held accountable for your actions.

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. Even in light of the Wilkie Memo and reviewing the record holistically, 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,

10/24/2022

