



**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: 5051-22  
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 21 November 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 5 January 1989. On your pre-enlistment application, you reported illegal drug use, and arrest for driving under the influence

and theft. On 15 September 1989, after less than a year of service, you received non-judicial punishment (NJP) for violating Uniform Code of Military Justice (UCMJ) Article 134, for the wrongful possession of another person's identification card. On 22 August 1990, you received your second NJP for violation of UCMJ Article 134, for disobedience and drunkenness. On 10 January 1991, you received your third NJP for violation of UCMJ Article 92, for underage drinking. As a result of that NJP, you were given an Administrative Counseling (Page 13), which notified you that further deficiencies in your performance or conduct may result in disciplinary or administrative action.

On 23 August 1991, you received your fourth NJP for violations of UCMJ Article 117, drunken or reckless driving and Article 134, disorderly conduct, drunkenness. On 18 December 1991, you completed Level III Inpatient Treatment for alcohol dependence. You were classified as a treatment failure due to your continued consumption of alcohol against orders to abstain and while prescribed Antabuse. On 27 April 1992, you received your fifth NJP for violation of UCMJ Article 92, for driving without a license and operating a motor vehicle on government property while your driving privileges were suspended. On 2 September 1992, you received your sixth NJP for violation of UCMJ Article 86, for a period of unauthorized absence. On 17 September 1992, you received your seventh and final NJP for violation of UCMJ Article 107, for making a false official statement.

As a result of your repeated misconduct, you were notified that you were being recommended for administrative discharge from the Navy by reason of misconduct - pattern of misconduct and commission of a serious offense. You were advised of, and waived, your procedural rights to consult with military counsel and to present your case to an administrative discharge board. Your commanding officer 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 by reason of misconduct due to pattern of misconduct. On 8 October 1992, you were discharged from the service with an OTH.

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 poor mental health resulted in your drinking and led to your misconduct. For purposes of clemency and equity consideration, the Board noted you provided supporting documentation describing post-service accomplishments and 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 26 September 2022. The AO noted in pertinent part:

During military service, the Petitioner was evaluated and diagnosed with an alcohol use disorder, for which he received treatment. Problematic alcohol use is

incompatible with military readiness and discipline, and considered amenable to treatment, depending on the willingness of the individual. During service, he demonstrated an awareness of his misconduct and was deemed responsible for his behavior. There is no evidence that he was diagnosed with another mental health condition during military service, or that he exhibited any psychological symptoms or behavioral changes indicative of another diagnosable mental health condition. He has provided no medical evidence of another mental health condition. Unfortunately, his personal statement and available records are not sufficiently detailed to establish a nexus with his misconduct, particularly given his pre-service problematic alcohol use. 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, "it is my considered clinical opinion there is insufficient evidence of a mental health condition that may be attributed to military service. There is insufficient evidence his misconduct could be attributed to a mental health condition, other than alcohol use disorder."

After thorough review, the Board concluded your potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your repeated misconduct, as evidenced by your seven NJPs, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact it involved extensive alcohol abuse despite the Navy's attempt to treat your condition. Further, the Board also considered the likely negative impact your conduct had on the good order and discipline of your command. The Board also determined that excessive alcohol consumption by a Sailor is contrary to Navy core values and policy, renders such Sailor unfit for duty, and poses an unnecessary risk to the safety of their fellow Sailors. In making its determination, the Board concurred with the AO and determined that there is insufficient evidence of a mental health condition that may be attributed to military service, other than alcohol use disorder, and there is insufficient evidence your misconduct could be attributed to a mental health condition. Additionally, the Board highlighted your pre-service problematic alcohol use. 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 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. While the Board commends your post-discharge accomplishments and involvement in the community, 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 an upgraded characterization of service as a matter of clemency or equity. 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,

12/5/2022

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Executive Director

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