



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: 5425-22

Ref: Signature Date



Dear █

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 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). Additionally, the Board also considered the advisory opinion (AO) furnished by a qualified mental health provider, 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 entered active duty on 30 May 2002. Your pre-enlistment medical examination, on 23 March 2002, and self-reported medical history noted no psychiatric or

neurologic conditions or symptoms. You expressly denied any pre-service alcohol abuse on your medical history.

Your service record indicates that you received non-judicial punishment (NJP) on 31 March 2003 for an undisclosed Uniform Code of Military Justice violation. Your performance evaluation for the period ending 23 October 2003 stated the following in the comments section:

Airman Recruit ██████████ has displayed poor judgement and self control, which was evident by his receiving his third alcohol related incident, which has negatively affected the command climate. Airman Recruit ██████████ has been diagnosed by the Navy's Substance Abuse Rehabilitation Program as a program failure and has been recommended for an administrative discharge from the United States Navy.

You were notified that you were being processed for an administrative discharge by reason of being an alcohol abuse rehabilitation failure. Ultimately, on 23 October 2003, you were separated from the Navy with a General (Under Honorable Conditions) (GEN) characterization of service.

On 20 March 2017, the Naval Discharge Review Board determined that your discharge was proper and that no change in characterization was warranted. On 7 December 2020, this Board denied your initial petition for relief.

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 for a discharge upgrade and contentions that: (a) post-service you found out you had a rare blood disorder that required a liver transplant, (b) you worked around JP-5 fuel every day which may have come in contact with your bloodstream, (c) your GEN discharge was from alcohol and because you forgot to get a signature at one of your AA meetings, and (d) after seeing all of the benefits you missed out on you just want what you feel you deserve. For purposes of clemency and equity consideration, the Board noted you did not provide supporting documentation describing post-service accomplishments or advocacy letters.

As part of the Board review process, the BCNR Physician Advisor who is a licensed clinical psychologist (Ph.D.), reviewed your contentions and the available records and issued an AO dated 27 September 2022. The Ph.D. stated in pertinent part:

Available records indicate the Petitioner was diagnosed with an alcohol use disorder during military service. There is no evidence of a diagnosis of PTSD or another mental health condition during service. 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. However, available evidence indicates the Petitioner was not amenable to treatment, and that he was aware of the potential for misconduct when he began to drink and was deemed 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 provide a nexus with his misconduct. 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 Ph.D. concluded, "it is my considered clinical opinion 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 his misconduct could be attributed to PTSD or another mental health condition."

After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. In accordance with the Kurta, Hagel, and Wilkie Memos, the Board gave liberal and special consideration to your record of service, and your contentions about any traumatic or stressful events you experienced and their possible adverse impact on your service. However, the Board concluded that there was no nexus between any PTSD or mental health-related symptoms and your misconduct, and determined that there was insufficient evidence to support the argument that any such mental health conditions or symptoms mitigated the misconduct that formed the basis of your discharge. Even under the liberal consideration standard, the Board concluded that your misconduct was not due to mental health-related conditions or symptoms. 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.

The Board noted that character of military service is based, in part, on conduct and overall trait averages which are computed from marks assigned during periodic evaluations. Your overall active duty trait average in conduct from your available evaluations was approximately 1.0. Navy regulations in place at the time of your discharge required a minimum trait average of 2.5 in conduct (proper military behavior), for a fully honorable characterization of service. The Board concluded that your conduct marks during your active duty career were a direct result of your misconduct which further justified your GEN characterization of discharge.

The Board noted that there is no provision of federal law or in Navy/Marine Corps regulations that allows for a discharge to be automatically upgraded after a specified number of months or years. The Board did not believe that your record was otherwise so meritorious as to deserve a discharge upgrade. The Board concluded that significant negative aspects of your conduct and/or performance greatly outweighed any positive aspects of your military record. The Board determined that characterization under Other Than Honorable (OTH) conditions or GEN conditions is appropriate when the basis for separation is the commission of an act or acts constituting a significant departure from the conduct expected of a Sailor. Lastly, absent a material error or injustice, the Board generally will not summarily upgrade a discharge solely for the purpose of facilitating veterans' benefits, or enhancing educational or employment opportunities. As a result, the Board determined that there was no impropriety or inequity in your discharge, and even under the liberal consideration standard, the Board concluded that your misconduct clearly merited your receipt of a GEN discharge. 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
Signed by: █