



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: 5525-22
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 7 December 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.

You enlisted in the Navy and began a period of active duty on 28 November 1979. During the period from 4 April 1980 to 1 July 1982, you received four instances of non-judicial punishment (NJP). Your offenses were four periods of unauthorized absence (UA) totaling 16 days, absence from your appointed place of duty, failure to go to your appointed place of duty, two specifications of incapacitating yourself for performance of duties through prior indulgence in intoxicating liquors, and wrongful possession of marijuana. On 1 July 1982, you were counseled that you may be considered for an administrative discharge by reason of misconduct due to your

frequent involvement of a discreditable nature with military authorities. You were advised that you would be given a reasonable opportunity to overcome your deficiencies, and if no improvement were forthcoming within a reasonable time, you would be processed for administrative discharge Under Other Than Honorable (OTH) conditions. On 21 July 1982, you received your fifth NJP for nine specifications of missing restricted men's muster.

On 25 August 1982, you participated in inpatient alcohol treatment for chronic alcoholism, and subsequently completed treatment with a good prognosis on 20 October 1982. As part of your aftercare treatment plan, you were to continue supervised Antabuse program for a period of one year and attend at a minimum of three alcohol anonymous meetings per week. However, on 2 December 1982, you received your sixth NJP for two specification of UA totaling five days and failure to obey a written instruction. On 17 December 1982, you received your seventh NJP for 10 specifications of missing restricted men's muster. As a result, on 29 March 1983, you were notified that you were being recommended for administrative discharge from the Navy by reason of misconduct due to pattern of misconduct and alcohol rehabilitation failure. You waived your procedural rights to consult with military counsel and present your case to an administrative discharge board (ADB). Your commanding officer (CO) then 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. On 15 July 1983, you were discharged from the Navy with an OTH characterization of service by reason of misconduct due to pattern of misconduct.

Post-discharge, you applied to the Naval Discharge Review Board (NDRB) for a discharge upgrade. The NDRB denied your request for an upgrade, on 24 December 1984, based on their determination that your discharge was proper as issued.

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 change your discharge character of service and contention that several years after discharge your discharge you were diagnosed with "stress syndrome," which contributed to your alcohol use and subsequent misconduct during your military service. 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's review, a qualified mental health professional reviewed your request and provided the Board with an AO on 1 November 2022. The AO noted in pertinent part:

During military service, the Petitioner was diagnosed with an alcohol use disorder, for which he received unsuccessful treatment. Problematic alcohol use is incompatible with military readiness and considered amenable to treatment, and the evidence indicates he was aware of his misconduct and deemed responsible for his behavior. There is no evidence of another mental health condition in military service. Post-service, he has received diagnosis and treatment for depression that is temporally remote to his military service and appears unrelated. Unfortunately,

available records are not sufficiently detailed to establish clinical symptoms of depression during military service or a nexus with his misconduct. His in service misconduct appears to be a continuation of problematic alcohol use behavior established prior to military service. Additional records (e.g., mental health records describing the Petitioner's 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 his alcohol use disorder."

After thorough review, the Board concluded your potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your seven NJPs, 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 likely negative impact your conduct had on the good order and discipline of your command. Additionally, the Board concurred with the AO that there is insufficient evidence of a mental health condition that may be attributed to military service, and there is insufficient evidence your misconduct could be attributed to a mental health condition, other than your alcohol use disorder. As noted in the AO, the evidence indicates you were aware of your misconduct and deemed responsible for your behavior. 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. Based on these factors, the Board also determined your narrative reason for separation remains appropriate. 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, changing your narrative reason for separation, or granting relief as a matter of clemency or equity. 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,

12/27/2022

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Executive Director
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