



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: 5545-22
Ref: Signature Date

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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.

A three-member panel of the Board, sitting in executive session, considered your application on 22 November 2022. The names and votes of the members of the panel 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 as well as the 12 September 2022 and 3 November 2022 advisory opinions (AOs) furnished by the Licensed Clinical Psychologist, and your response to the AO.

The Board carefully considered your request to reinstate your pay grade to E-5, promotion to E-6 if applicable based on the cycle 252 exam, and entitlement to back pay and allowances. You also request to remove any derogatory information, evaluations and performance reviews the board deems fit. The Board considered that the correction to your record should be made on the grounds of disproportionality. You contend that the punishment was not commensurate with the offense when considered in context and by weighing the offense against your years of good conduct, evaluations, awards, quality of work, reenlistment and overwhelming potential. You also contend that your punishment was more exemplary than restitution based and mitigating factors were not taken into account, regarding your mental health. You claim that you were dealing with an extended pay issue, increasing debt, the death of a close personal friend, shipmate and co-leader while on deployment, as well as the overwhelming strain on your marriage and family because of obligations to the Navy. You acknowledged that punishment is needed to ensure corrective action, however, you assert that the prescribed punishment put you at risk for high year tenure separation with little to no opportunity to correct your status. You also assert that other remedies such as a suspension in rank in conjunction with the maximum half

months pay would have been more effective to teach and correct while allowing you the opportunity to continue to serve.

Based on your mental health claim, the Board considered the aforementioned AOs. The 12 September 2022 AO stated in pertinent part:

There is no evidence that he was diagnosed with a mental health condition in military service, or that he exhibited any psychological symptoms or behavioral changes indicative of a diagnosable mental health condition. 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., complete service medical record describing the Petitioner's mental health 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 that his misconduct could be attributed to a mental health condition.

In response to the AO, you submitted rebuttal evidence that included a statement and medical evidence.

As a result, the 3 November 2022 AO was issued. The AO stated in pertinent part:

This Advisory Opinion (AO) Rebuttal Response, like the previous AO, reference (a), will only address the mental health claims by Petitioner. The Petitioner has provided evidence of AUD treatment during military service, as well as evidence of diagnosis and treatment for an Adjustment Disorder prior to his misconduct. Problematic alcohol use and substance use are incompatible with military readiness and discipline and considered amenable to treatment, depending on the willingness of the individual. It appears that the Petitioner has been compliant with his treatment program. Although the Petitioner's reported stressors and mental health concerns may have contributed to increased alcohol use as a poor coping response, there is no evidence he was unaware of the potential for misconduct when he began to drink or was not responsible for his behavior.

The AO revised its conclusion to state, "it is my considered clinical opinion that there is evidence of a mental health condition (Adjustment disorder) in addition to an Alcohol Use Disorder during military service. There is insufficient evidence his mental health conditions were not being properly treated or that he was not responsible for his behavior."

After thorough review, the Board substantially concurred with AOs that there is insufficient evidence that your mental health conditions were not being properly treated or that you were not responsible for your behavior. In this regard, the Board noted that you received non-judicial punishment (NJP) for violating Uniform Code of Military Justice (UCMJ) Article 113 for the drunken or reckless operation of a vehicle, aircraft, or vessel. The Board also noted that your

Commanding Officer found you guilty at NJP and awarded reduction in rate to E-5. The Board determined that your NJP was conducted according to the *Manual for Courts-Martial* (2019 ed.).

The Board noted that you provided evidence of Alcohol Use Disorder (AUD) treatment during military service, as well as evidence of diagnosis and treatment for an Adjustment Disorder. The Board determined that there is evidence of a mental health condition, however, your mental health condition does not excuse your misconduct. In making this finding, the Board relied on the AO's conclusion that there was insufficient evidence that you were not mentally responsible for your misconduct. Ultimately, the Board determined that your NJP was valid and the awarded punishment was proportionate to your misconduct based on the seriousness of your misconduct. Based upon the foregoing, the Board concluded that there is no probable material error, substantive inaccuracy, or injustice warranting your reinstatement to E-5 or promotion to E-6. 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,

12/12/2022

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Executive Director
Signed by: █