



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
701 S. COURTHOUSE ROAD, SUITE 1001
ARLINGTON, VA 22204-2490

█
Docket No: 6532-22
Ref: Signature Date



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 12 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). Additionally, the Board also considered an advisory opinion (AO) furnished by qualified mental health provider. Although you were afforded an opportunity to submit an AO rebuttal for consideration, you chose not to do so.

You enlisted in the Navy and entered active duty on 10 August 1987. As part of your enlistment application, on 24 November 1986, you signed and acknowledged the "Drug and Alcohol Abuse Statement of Understanding." Your pre-enlistment physical examination, on 26 November 1986, and self-reported medical history both noted no psychiatric or neurologic conditions or symptoms. You disclosed pre-service marijuana use but denied all other alcohol and drug abuse.

On 29 September 1990, you were evaluated by a Medical Officer (MO) for alcohol abuse. Prior to your evaluation you had previously seen an MO for Antabuse therapy starting back in May 1990. During your latest evaluation you disclosed to the MO a history of pre-service alcohol

abuse since age sixteen with heavy drinking in high school and drinking up to a fifth of liquor at one time. You described a history of blackouts and alcohol-related incidents to include a recent moped/pedestrian accident. You admitted to drinking alcohol while taking Antabuse and you did not desire further Antabuse treatment. The MO diagnosed you with alcohol dependence and recommended Level III inpatient alcohol rehabilitation treatment.

On 10 October 1990, you received non-judicial punishment (NJP) for driving while impaired by alcohol that resulted in an injury to a pedestrian. You did not appeal your NJP. Following your NJP, on 11 October 1990, your command notified you that you were being processed for an administrative discharge by reason of misconduct due to the commission of a serious offense. You elected to waive your rights to consult with counsel, and to elect an administrative separation board. In the interim, refused your right to receive inpatient Department of Veterans Affairs (VA) alcohol rehabilitation treatment. Ultimately, on 9 January 1991, you were discharged from the Navy for misconduct with an under Other Than Honorable (OTH) characterization of service and assigned an RE-4 reentry code.

On 4 February 1993, the Naval Discharge Review Board denied your initial application for discharge upgrade 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: (a) you are asking for a discharge upgrade so you can apply for VA benefits, and (b) you are looking for help with your alcohol issues, but can't get help from the VA due to the character of your discharge. 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 25 October 2022. The Ph.D. stated in pertinent part:

Petitioner was appropriately referred for psychological evaluation during his enlistment, properly evaluated, and diagnosed with an alcohol use disorder. This diagnosis was based on observed behaviors and performance during his period of service, the information he chose to disclose, and the psychological evaluation performed by the mental health clinicians. Problematic alcohol use is incompatible with military readiness and discipline, and the evidence indicates he was aware of the potential for misconduct when he began to drink and was deemed responsible for his behavior. There is no evidence of another mental health condition and he has provided no additional medical evidence to support his claims. 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 Ph.D. concluded, "it is my considered clinical opinion there is insufficient evidence of a mental health condition that may be attributed to military service, other than alcohol use

disorder. There is insufficient evidence his misconduct may be attributed to a mental health condition, other than alcohol use disorder.”

After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. In accordance with the Hagel, Kurta, 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 mental health conditions and/or related symptoms and your misconduct, and determined that there was insufficient evidence to support the argument that any such mental health conditions mitigated the misconduct that formed the basis of your discharge. As a result, the Board concluded that your misconduct was not due to mental health-related conditions or symptoms. Even if the Board assumed that your misconduct was somehow attributable to any mental health conditions, the Board unequivocally concluded that the severity of your misconduct far outweighed any and all mitigation offered by such mental health conditions. The Board determined the record reflected that your 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 not be held accountable for your actions.

The Board noted that a fraudulent enlistment occurs when there has been deliberate material misrepresentation, including the omission or concealment of facts which, if known at the time, would have reasonably been expected to preclude, postpone, or otherwise affect a Sailor’s enlistment eligibility. You technically fraudulently enlisted when you clearly intentionally failed to disclose your pre-service alcohol abuse history. The Board determined that you had a legal, moral, and ethical obligation to remain truthful on your enlistment paperwork. Had you properly and fully disclosed your extensive pre-service alcohol abuse history, you would have likely been disqualified from enlisting.

The Board also 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 OTH 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. Moreover, absent a material error or injustice, the Board declined to summarily upgrade a discharge solely for the purpose of facilitating VA 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 and disregard for good order in discipline clearly merited your receipt of an OTH. 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,

