



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. 6782-22

Ref: Signature Date



Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to Title 10, United States Code, Section 1552. 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 Board waived the statute of limitation 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 27 February 2023. 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 the 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, 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)/mental health condition (MHC) (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). As part of the Board's review, a qualified mental health professional reviewed your request and provided the Board with an Advisory Opinion (AO) on 14 December 2022. Although you were provided an opportunity to submit a rebuttal to the AO, you chose not to do so.

You enlisted in the Navy and began a period of active duty on 16 September 1986. On 17 September 1986, you were briefed on the Navy's drug and alcohol abuse policy. On 28 May 1987, you were counseled for incidents of unauthorized absence (UA) and tardiness while being warned that subsequent violation(s) of the UCMJ or conduct resulting in civilian conviction could result in an administrative separation under Other Than Honorable conditions (OTH).

On 2 July 1987, you were referred to medical by your command due to your history of suicide attempts. The psychologist who evaluated you also noted, for the past eight months you had used alcohol heavily. Subsequently, you were diagnosed with Alcohol Dependence, Adjustment Disorder with Depressed Mood.

On 8 July 1987, you received nonjudicial punishment (NJP) for failure to go to your appointed place of duty, two specifications of violation of other lawful order, and communicating a threat. As a result, on 6 August 1987, you were notified of your pending administrative separation by reason of alcohol abuse rehabilitation failure, at which time you waived your right to consult with military counsel and to have your case heard before an administrative discharge board. On 11 August 1987, your commanding officer's letter to the separation authority stated, "[Petitioner] reported to us on 23 March 1987 in a temporary status while awaiting completion of a security clearance check for follow on orders to █. During this time member received commanding officer's non-judicial punishment thus making him ineligible for duty at █. Member was referred to Alcohol Rehabilitation Service, Naval Hospital, █ after he was evaluated by a doctor from █ Mental Health Clinic and it was determined that he had an alcohol problem and the treatment required was beyond the capabilities of Level II treatment...member's refusal to cooperate while at the hospital [which] ultimately has led to his return to this command before completion of the treatment program. Based on the foregoing, it is my belief that further retention of [Petitioner] would not be in the best interest of the Navy. He is being separated from the naval service with a discharge characterization as General." Ultimately, on 14 August 1987, you were so discharge.

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 and your contentions that: (1) you incurred mental health concerns during military service, (2) other "areas" should have been explored such as mental health, and (3) you did not know you could dispute your discharge until a "recent mental health incident." For purposes of clemency and equity consideration, the Board noted you did not provide supporting documentation describing post-service accomplishments or advocacy letters.

Based on your assertions that you incurred mental health concerns during military service, which might have mitigated your discharge characterization of service, a qualified mental health professional reviewed your request for correction to your record and provided the Board with an AO. The AO stated in pertinent part:

The Petitioner contends that "other issues should have been explored like mental health." He was appropriately referred for psychological evaluation during his enlistment and properly evaluated over multiple encounters. His diagnoses were based on observed behaviors and performance during his period of service, the information he chose to disclose, and the psychological evaluations performed by mental health clinicians as documented in his service records. 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 AO conclude, "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."

After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your NJP, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and found that your conduct showed a complete disregard for military authority and regulations. Further, the Board considered your refusal to participate in alcohol rehabilitation treatment and the likely negative effect 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 your military service or your misconduct. As a result, the Board concluded significant negative aspects of your active service outweighed the positive aspects and continues to warrant a GEN. 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 granting you the relief you requested or granting relief 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 the 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 is attached 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,

3/7/2023

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Executive Director

Signed by: █