



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

██████████  
Docket No. 9376-22

Ref: Signature Date

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██  
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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 limitations 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 8 May 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 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)/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). The Board also considered an advisory opinion (AO) from a qualified mental health professional, dated 24 March 2023. Although you were provided an opportunity to comment on the AO, 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 entered active duty with the Navy on 5 April 2000. During the period from 21 September 2000 and 30 November 2000, you received two non-judicial punishments (NJP) for

incapacitated for the performance of duties and unauthorized absence (UA). At some point afterwards, you attended Level II alcohol rehabilitation treatment.

On 11 April 2001, you received NJP for one day of UA. On 10 April 2002, you received NJP for two specifications of failure to obey a lawful order or regulation, making a false official statement, and two specifications of misbehavior of a sentinel. On 10 May 2002, you received NJP for two specifications of failure to go to appointed place of duty, disrespect toward a superior commissioned officer, two specifications of failure to obey an order or regulation, and larceny.

Subsequently, you were notified of pending administrative separation action by reason of misconduct due to commission of a serious offense, pattern of misconduct, and alcohol rehabilitation failure. After you waived your rights, your commanding officer (CO) forwarded your package to the separation authority (SA) recommending your discharge with an Other Than Honorable (OTH) characterization of service. The separation authority (SA) approved the recommendation and directed an OTH discharge by reason of commission of a serious offense. On 10 June 2002, you were so discharged.

Post-discharge, you applied to the Naval Discharge Review Board (NDRB) for a discharge upgrade. On 3 February 2011, the NDRB denied your requests after determining 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 upgrade your discharge and contentions that you incurred PTSD and other mental health concerns during military service, which might have mitigated your characterization, and you are in need of Department of Veterans Affairs (VA) benefits to assist with your day-to-day living. For purposes of clemency and equity consideration, the Board considered the evidence you provided in support of your application.

As part of the Board's review, a qualified mental health professional reviewed your request and provided the Board with an AO on 24 March 2023. The mental health professional stated in pertinent part:

While there is no evidence of a formal mental health diagnosis, there is behavioral evidence of an alcohol use disorder during military service. Problematic alcohol use is incompatible with military readiness and treatment and does not remove responsibility for behavior. Post-service, the Petitioner has provided evidence of chronic mental health problems beginning three years post-service. While some of his disobedience could be attributed to unrecognized symptoms of depression that may have been masked by alcohol use, it is difficult to attribute all of his misconduct, particularly larceny, misbehavior of a sentinel, false official statements and threats while intoxicated to a mental health condition. Additional records (e.g., post-service mental health records describing the Petitioner's diagnosis,

symptoms, and their specific link to his misconduct) may aid in rendering an alternate opinion.

The AO concluded, “it is my clinical opinion there is post-service evidence from civilian providers of a mental health condition that may have been experienced during military service. There is insufficient evidence to attribute all of his misconduct to a mental health condition.”

After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined your misconduct, as evidenced by your NJPs, outweighed the potential mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the likely negative effect it had on the good order and discipline of the command. Further, the Board concurred with AO that there is insufficient evidence of a mental health condition that may be attributed to your military service or misconduct. The Board agreed with the analysis that while you provided post-service evidence of mental health issues, it is difficult to attribute larceny, misbehavior of a sentinel, false official statements, and threats while intoxicated to a mental health condition. Finally, absent a material error or injustice, the Board declined to summarily upgrade a discharge solely for the purpose of facilitating veterans’ benefits, or enhancing educational or employment opportunities. As a result, the Board concluded significant negative aspects of your service outweigh the positive aspects and continues to warrant an OTH characterization. While the Board carefully considered the evidence you submitted in mitigation, even in light of the Wilkie Memo and reviewing the record liberally and 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 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, \_\_\_\_\_

5/17/2023

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Deputy Director

Signed by: █