



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

█  
Docket No. 2478-23

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 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 13 November 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 service 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. Although you were afforded an opportunity to submit an AO rebuttal, 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 enlisted in the United States Navy and commenced a period of service on 7 July 1987. On your enlistment application, you acknowledged two pre-service misconduct, to include an alcohol related arrest and drug use. On 18 December 1987, you received non-judicial punishment (NJP) for violation of Uniform Code of Military Justice (UCMJ) Article 91, for disrespect, and Article

92, for failure to obey a lawful order. You were formally counseled due to this misconduct and did not appeal your NJP. On 9 February 1988, you received your second NJP for violation of UCMJ Article 86, for unauthorized absence (UA) from your place of duty, Article 91, for failure to obey a lawful order, and Article 92, for dereliction of duty. You were again formally counseled due to this misconduct and did not appeal your NJP.

On 19 March 1988, you received a psychiatric evaluation wherein you were diagnosed with “Alcohol Abuse, Severe, continuous, Marijuana Abuse in remission, and Antisocial Personality Traits.” You were referred to the substance abuse clinic for Level II alcohol rehabilitation, but did not attend substance abuse treatment due to your ship’s operational schedule.

On 10 April 1988, you received your third NJP for violation of UCMJ Article 86, for failure to go to your place of duty, Article 91, for disrespect, and Article 92, for two specifications of failure to obey a general order and regulation, and Article 134, for incapacitation due to prior indulgence. Your previous NJP suspension was vacated and you did not appeal this NJP.

On 19 April 1988, you were notified that you were being processed for an administrative discharge by reason of “pattern of misconduct” and “commission of a serious offense.” You waived your right to consult with qualified counsel and your right to present your case at an administrative separation board. Prior to discharge processing, you presented to sick call complaining of knee pain and alcohol was smelled on your breath. You provided three empty bottles of alcohol and stated that you previously disclosed your alcohol problem. The medical provider recommended that you follow up with Psychiatry for Antabuse therapy.

On 6 May 1988, you received your fourth NJP for violation of UCMJ Article 134, for drunk on ship, incapacitated due to prior indulgence, and Article 92, for violation of a general regulation by bringing liquor aboard ship. You did not appeal this NJP. On 15 May 1988, you were apprehended in █ Police and charged with drunk and disorderly conduct, resisting arrest, and assault of a police officer. Upon return to military control, you were again assessed for alcohol abuse. On 10 June 1988, you received your fifth and final NJP for violation of UCMJ Article 86, for a period of UA. You did not appeal this NJP.

During your separation physical, on 18 June 1988, you denied any mental health concerns or symptoms. On 12 August 1988, you were offered Department of Veterans Affairs (VA) in-patient treatment for alcoholism prior to your discharge, but you refused treatment and requested discharge at the first available opportunity and acknowledged your alcohol abuse. Ultimately, on 16 August 1988, you were discharged from the Navy with an Other Than Honorable (OTH) characterization of service and assigned an RE- 4 reentry code.

The Board carefully considered all potentially mitigating and/or extenuating 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) your desire to upgrade your characterization of service, (b) your contention that you were suffering from undiagnosed mental health issues during your service, which caused you to self-medicate with alcohol, and (c) the impact that your mental health had on your conduct. For purposes of clemency and equity consideration, the Board noted that you provided documentation related to your post-service accomplishments and 14 character letters, including information about your sobriety.

In your request for relief, you contend that you incurred mental health concerns during military service, which drove you to abuse alcohol. You explain that you were young and did not seek help, and therefore acted in ways that were not conducive to the military. 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 3 October 2023. The Ph.D. noted in pertinent part:

The Petitioner contends that he was depressed and abused alcohol which resulted in his misconduct. It is difficult to separate the symptoms between depression and alcohol dependence because one common symptom of alcohol dependence is depression. It appears as though a majority of his misconduct was due to the effects of alcohol intoxication. For example, assault, resisting arrest, and disrespect toward authority are not typical symptoms associated with depression. There is no evidence that the Petitioner was diagnosed with a mental health condition or suffered from while in military service, or that he exhibited any psychological symptoms or behavioral changes indicative of a diagnosable mental health condition other than alcohol dependence. 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 Ph.D. concluded, "it is my considered clinical opinion there is sufficient evidence of a mental health condition that likely existed prior to service that was worsened by his alcohol dependence. There is insufficient evidence that his misconduct could be attributed to a mental health condition."

After thorough review, the Board concluded the potentially mitigating factors were insufficient to warrant relief. In accordance with the Kurta, Hagel, and Wilkie Memos, the Board gave liberal and special consideration to your record of service, and your contentions about undiagnosed mental health issues and the possible adverse impact on your service. Specifically, the Board felt that your misconduct, as evidenced by your NJPs and civilian conviction, outweighed these mitigating factors. The Board considered the seriousness of your misconduct and the fact that it involved repeated alcohol related misconduct. Further, the Board also considered the likely negative impact your conduct had on the good order and discipline of your command. The Board determined that sustained alcohol abuse is contrary to the Navy core values and policy, renders such Sailor unfit for duty, and poses an unnecessary risk to the safety of fellow shipmates.

In making this determination, the Board concurred with the advisory opinion that there was no convincing evidence that you suffered from any type of mental health condition while on active duty, or that any such mental health condition was related to or mitigated the misconduct that formed the basis of your discharge. Your in-service misconduct appears to be consistent with your alcohol use disorder, rather than evidence of another mental health condition incurred in or exacerbated by military service. You did not provide any post-service medical documents in support of your contention and your personal statement fails to draw sufficient nexus to the underlying misconduct. As a result, the Board concluded that your misconduct was not due to

mental health-related symptoms, rather, due to your sustained alcohol abuse. The Board determined the record clearly reflected that your active duty 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 otherwise not be held accountable for your actions. The Board concluded that your conduct constituted a significant departure from that expected of a Sailor and continues to warrant an OTH characterization.

Therefore, while the Board carefully considered the evidence you submitted in mitigation and commends your post-discharge accomplishments, even in light of the Kurta, Hagel, and Wilkie Memos 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. Ultimately, the Board concluded the mitigation evidence you provided was insufficient to outweigh the seriousness of your misconduct. 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,

11/19/2023

