



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

■
Docket No. 4009-23
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.

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 1 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 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). The Board also considered the advisory opinion (AO) furnished by a qualified mental health professional dated 14 September 2023, which was previously provided to you. Although you were afforded an opportunity to submit an AO rebuttal, you chose not to do so.

You enlisted in the Navy and began a period of active duty on 27 August 2001. On 2 June 2004, you were counseled concerning your personal responsibilities. On 20 August 2004, you received non-judicial punishment (NJP) for unauthorized absence (UA). On 23 August 2004, you were issued an administrative remarks (Page 13) counseling concerning deficiencies in your performance and conduct. Specifically, your lack of military bearing, possible alcohol addiction, financial difficulties, and UA. You were advised that any further deficiencies in your

performance and/or conduct may result in disciplinary action and in processing for administrative separation. The record shows you were diagnosed with alcohol abuse in August 2004, began treatment in October 2004, but did not complete the full outpatient program and declined inpatient services. On 21 January 2005, you received a second NJP for UA. As a result, on 1 March 2005, you were notified of pending administrative separation action by reason of misconduct due to a pattern of misconduct and alcohol rehabilitation failure. The record shows you elected your right to consult with military counsel. The separation authority directed your administrative discharge from the Navy with a General (Under Honorable Conditions) (GEN) character of service by reason of misconduct due to pattern of misconduct. On 14 April 2005, you were so discharged.

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 change your discharge character of service and contentions that you struggled with mental health issues during your service, you feel that it played a role in why you were not given an Honorable discharge at the time, and that the Department of Veterans Affairs (VA) has rated you at 100 percent for your service connected disabilities. 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's review, a qualified mental health professional reviewed your request and provided the Board with an AO on 14 September 2023. The AO noted in pertinent part:

During military service, the Petitioner was evaluated and diagnosed with an alcohol use disorder, for which he declined treatment. There is no evidence of a diagnosis of PTSD. Post-service, the VA has granted service connection for a mental health condition attributed to military service. There is insufficient evidence to attribute his misconduct to a mental health condition, as available records indicate his MDD became clinically interfering after he separated from service. 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 the VA of a mental health condition that may be attributed to military service. There is insufficient evidence of a diagnosis of PTSD that may be attributed to military service. There is insufficient evidence to attribute his misconduct to a mental health condition."

After thorough review, the Board concluded your potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your NJPs, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the negative impact your conduct likely had on the good order and discipline of your command. Further, the Board concurred with the AO that while there is post-service evidence from the VA of a mental health condition that may be attributed to military service, there is insufficient evidence of a diagnosis of PTSD that may be attributed to military service, and there is insufficient evidence to attribute your misconduct to a mental health

condition. As the AO explained, during your military service, you were evaluated and diagnosed with an alcohol use disorder, for which you declined treatment. There is no evidence of a diagnosis of PTSD. Furthermore, the Board 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, and the Board noted that you did not provide any evidence, other than your statement, to substantiate your contention. Finally, be advised decisions reached by the VA to determine if former service members rate certain VA benefits do not affect previous discharge decisions made by the Navy. The criteria used by the VA in determining whether a former service member is eligible for benefits are different than that used by the Navy when determining a member's discharge characterization of service. As a result, the Board determined significant negative aspects of your active service outweighed the positive and continues to warrant a GEN characterization. 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. 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,

11/16/2023

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Executive Director

Signed by: █