



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

█  
Docket No. 6257-23  
Ref: Signature Date

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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 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 23 February 2024. 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, 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 the advisory opinion (AO) furnished by a qualified mental health professional. Although you were provided an opportunity to respond to the AO, you chose not to do so.

You enlisted in the Marine Corps and commenced active duty on 12 November 1996. On 21 August 1997, you received non-judicial punishment (NJP) for consuming alcohol in violation of a Battalion order, possessing a three-inch knife in the barracks in violation of a Battalion order, threatening a Lance Corporal with a three-inch knife, and being involved in an incident not conducive to Marine Corps standards. On 17 September 1997, you were issued an administrative remarks (Page 11) counseling concerning deficiencies in your performance and/or conduct. You were advised that any further deficiencies in your performance and/or conduct may result in disciplinary action and in processing for administrative discharge.

Subsequently, you were referred to medical for substance abuse evaluation, diagnosed with Alcohol abuse, and sent to an outpatient treatment program. On 21 October 1997, you were terminated from the outpatient treatment program due to drinking while in treatment, given an aftercare treatment plan, and recommended for administrative separation.

On 22 October 1997, you received NJP for underage drinking, violating Battalion restriction orders, and ignoring an order from a Lance Corporal. Consequently, on 1 December 1997, you were notified of pending administrative separation processing with an Under Other Than Honorable conditions (OTH) discharge by reason of misconduct due to pattern of misconduct and alcohol rehabilitation failure. You elected to consult with legal counsel and subsequently requested an administrative discharge board (ADB). The ADB found that you had committed misconduct and recommended that you be discharged under General (Under Honorable Conditions) (GEN) conditions. The separation authority concurred with the ADB recommendation and, on 14 April 1998, 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 characterization of service and your contentions that you were having mental health issues prior to your separation that were not addressed, you didn't want your command to know you were struggling, and that you were awarded the Good Conduct Medal on 22 October 1997. 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 process, a qualified mental health professional reviewed your contentions and the available records and issued an AO dated 2 January 2024. The AO stated in pertinent part:

Petitioner was appropriately referred for psychological evaluation and properly evaluated during his enlistment. His alcohol use disorder 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 clinician. His in-service misconduct appears to be consistent with alcohol use disorder, rather than evidence of another mental health condition incurred in or exacerbated by military service. He has provided no medical evidence to support his claims.

The AO concluded, "it is my clinical opinion there is insufficient evidence of a diagnosis mental health condition that may be attributed to military service. There is insufficient evidence attribute his misconduct to a mental health condition other than alcohol use disorder."

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 likely negative impact your repeated misconduct had on

the good order and discipline of your command. The Board noted that you were given the opportunity to address your conduct issues, but you continued to commit misconduct. You received outpatient alcohol treatment, but continued to drink while in treatment, which ultimately lead to your alcohol rehabilitation failure. The Board also noted that you did not receive the Good Conduct Medal as you indicated. Your DD Form 214 indicates that your Good Conduct Medal Period “commenced,” or began, on 22 October 1997, which corresponds to the date of your last NJP because disciplinary action restarts the qualifying period. Additionally, the Board concurred with the AO and determined that there is insufficient evidence of a diagnosis of a mental health condition that may be attributed to military service, and there is insufficient evidence to attribute your misconduct to a mental health condition other than alcohol use disorder. As explained in the AO, you provided no medical evidence to support your claims.

As a result, the Board concluded that significant negative aspects of your service outweighed the positive aspects 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,

3/8/2024

