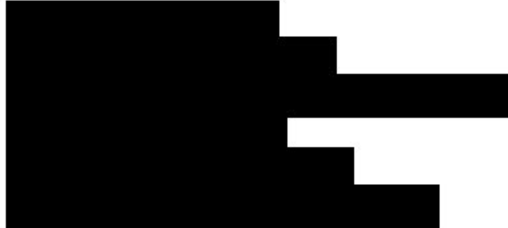
DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
701 S. COURTHOUSE ROAD, SUITE 1001
ARLINGTON, VA 22204-2490

Docket No. 6534-23
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 28 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 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 and your response dated 8 February 2024.

You enlisted in the United States Navy and commenced a period of service on 28 August 1997. On 28 September 2000, you presented to the Executive Officer's Inquiry (XOI) for disobedience by underage drinking and were directed to additional military and alcohol use instruction and ordered to avoid alcohol consumption until reaching legal age. On 22 November 2000, you received non-judicial punishment (NJP) for violation of Uniform Code of Military Justice (UCMJ) Article 92, for disobedience by underage drinking, Article 86, for unauthorized absence (UA), and Article 134, for possession of alcohol by a minor. You did not appeal this NJP. You were directed

to attend substance abuse counseling and began treatment in the Substance Abuse Rehabilitation Program (SARP).

On 8 February 2001, you were apprehended by base authorities for possession of an open container in a motor vehicle and underage drinking (BAC of .021%) while enrolled in SARP. This resulted in your termination from SARP treatment. On 10 February 2001, you began a period of UA and remained absent until your return to military control on 8 March 2001. On 21 March 2001, your command referred charges to Special Court Martial (SPCM) related to violations of Article 86, for 26 days of UA, Article 92, for disobedience by possessing alcohol in the barracks underage, and Article 134, for possession of a false identification card. After consulting with counsel, you requested separation with an Other Than Honorable (OTH) in lieu of trial by SPCM (SILT). After your separation request was approved, on 4 May 2001, you were discharged in lieu of trial and assigned a 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 and change your narrative reason for separation, (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 character letters, including information about your efforts related to sobriety.

In your request for relief, you contend that you incurred mental health concerns during military service due to stressors associated with your job duties and separation from your family. You assert that you used alcohol to alleviate symptoms of depression, which contributed to an alcohol use disorder. 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 10 January 2024. The Ph.D. noted in pertinent part:

> During military service, Petitioner was diagnosed and offered treatment for an alcohol use disorder. This 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. Problematic alcohol use is incompatible with military readiness and discipline and does not remove responsibility for behavior. Temporally remote to his military service, he has been diagnosed with depression and another substance use disorder, in addition to his alcohol use disorder. A civilian psychologist has deemed it is more likely than not that his alcohol use was related to in-service depression. However, it is difficult to attribute his misconduct to depression when alcohol is a depressant. It is difficult to attribute a decision to UA to depression, given his denial of mental health symptoms upon separation 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 Ph.D. concluded, "it is my clinical opinion there is insufficient evidence of a diagnosis of PTSD. There is post-service evidence from a civilian psychologist of a diagnosis of depression that may be attributed to military service. There is insufficient evidence to attribute his misconduct to PTSD or another mental health condition other than alcohol use disorder."

On 8 February 2024, you responded stating that the Advisory Opinion is not probative because it does not address the condition that is the basis of the application (Major Depressive Disorder), and instead focused on PTSD. You further argue that a diagnosis of PTSD is not required for an application to be granted[1]. On 12 February 2024, the Ph.D. reviewed your response, and as no new medical evidence was presented, the original opinion remained unchanged.

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 NJP and SPCM charges, outweighed these mitigating factors. The Board considered the seriousness of your misconduct and the fact that it involved repeated alcohol related misconduct and a substantial period of UA. 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. The Board highlighted that you requested a SILT, thereby avoiding a possible court martial conviction and punitive discharge. The Board felt that the separation authority already granted you clemency by accepting your separation in lieu of trial by court martial.

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. Your post-service diagnosis of Major Depressive Disorder is temporally remote to your service and fails to establish a sufficient nexus to your underlying misconduct, especially since alcohol is a depressant and your continued abuse could be the cause of your diagnosis rather than a symptom of your depression. The Board noted that your SILT request does not mention any mental health concerns, which would have triggered a mental health referral and assessment prior to your discharge. Further, during your separation physical, you fail to disclose any mental health symptoms or concerns, reporting that "I am presently in excellent health." 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

[1] The Board noted that the AO addressed the issue of PTSD because you checked Box 14 on the application stating that PTSD was a factor in your case. The Board also noted that the AO did address your diagnosis of depression and the possible impact on your behavior.

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 and a misconduct basis for separation.

While the Board carefully considered the evidence you submitted in mitigation and commends you for your post-service accomplishments and efforts towards sobriety, 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.

The Board noted that a part of your request pertains to your awards record. The Board did not consider or make a determination on this portion of your request, as you have not exhausted all administrative remedies prior to presenting these matters to the Board. The Board directs you to your servicing headquarters awards branch, in order to request that your awards record be reviewed and updated.

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,