



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

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Docket No. 10918-23

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 your application was not submitted within the statute of limitations, the Board found it in the interest of justice to review your request. A three-member panel of the Board, sitting in executive session, considered your application on 22 January 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, and applicable statutes, regulations, and policies, to include the 25 July 2018 guidance from the Under Secretary of Defense for Personnel and Readiness regarding equity, injustice, or clemency determinations (Wilkie Memo).

You enlisted in the United States Navy and commenced a period of service on 5 February 2004. On your enlistment application, you acknowledged a pre-service arrest for drug use and possession. On 12 March 2005, you were apprehended by the █ Police Department and charged with driving under the influence (DUI). On 28 July 2006, you were referred to and successfully completed Level I Outpatient Alcohol Treatment. On 25 January 2007, you were again arrested by the █ Police Department and charged with DUI, as well as possession of marijuana, having a concealed weapon, and reckless driving.

On 26 February 2007, you were notified that you were being processed for an administrative discharge by reason of misconduct by reason of alcohol rehabilitation failure 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. On 16 April 2007, you were discharged from the Navy due to your misconduct with an Other Than Honorable (OTH) characterization of service and assigned an RE- 4 reentry code.

You previously submitted a petition to the Naval Discharge Review Board and were denied relief on 4 April 2008.

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 governing regulations. 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 Alcohol Use Disorder during your service, which resulted in your discharge, (c) your professional performance outside of your civilian arrests, and (d) your assertion that the Navy did not provide you with the proper level of alcohol treatment. For purposes of clemency and equity consideration, the Board noted that you provided documentation related to your post-service accomplishments, to include character letters and information about your sobriety.

After thorough review, the Board concluded the potentially mitigating factors were insufficient to warrant relief. In accordance with the Wilkie Memo, the Board gave liberal and special consideration to your record of service, and your contentions about your Alcohol Use Disorder and the adverse impact that such condition had on your service. Specifically, the Board felt that your misconduct, as evidenced by your two civilian convictions, 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 found 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. Further, 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 highlighted that, despite having completed alcohol rehabilitation treatment after your first alcohol related arrest, you continued to abuse alcohol and committed additional serious misconduct that involved alcohol, weapons, and drugs. 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. The Board concluded that your conduct constituted a significant departure from that expected of a Sailor and continues to warrant an OTH characterization.

As a result, the Board concluded your conduct constituted a significant departure from that expected of a service member and continues to warrant an OTH characterization. While the Board carefully considered the evidence you submitted in mitigation and commends your post-service accomplishments to include your efforts towards sobriety, even in light of the Wilkie Memo and reviewing the record 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,

1/30/2024

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Executive Director

Signed by: █