



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. 7090-23
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 3 April 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 the 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). In addition, the Board considered an advisory opinion (AO) from 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 U.S. Marine Corps and entered active duty on 18 December 1990. On 10 December 1991, you received non-judicial punishment (NJP) for failure to go to your appointed place of duty. You were subsequently issued a counseling warning regarding you're not being at your appointed place of duty. On 13 December 1991, you were screened and recommended for Level III alcohol treatment. After you refused the treatment, your Commanding Officer (CO) made his recommendation to the Separation Authority (SA) that you be discharged with a General (Under Honorable Conditions) (GEN) characterization. The SA accepted the

recommendation and directed you be discharged for Alcohol Abuse Rehabilitation Failure. You were so discharged on 28 February 1992.

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 for a discharge upgrade and contention that you were diagnosed with PTSD, severe depression, and a Bipolar disorder with a disease of addiction. You argue that you are now a different person and a productive citizen. For purposes of clemency and equity consideration, the Board noted you provided medical documents but no supporting documentation describing post-service accomplishments or advocacy letters.

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 20 February 2024. The Ph.D. stated in pertinent part:

During military service, the Petitioner was evaluated for mental health concerns on multiple occasions. He was diagnosed with a primary Alcohol Use Disorder, and an additional Adjustment Disorder. He has received a diagnosis of PTSD that is temporally remote to his military service and appears unrelated. It is possible that symptoms characterized as difficulty adjusting in service have been reconceptualized as MDD with the passage of time and increased understanding. Unfortunately, his personal statement is not sufficiently detailed to provide a nexus with his misconduct. Problematic alcohol use is incompatible to military readiness and does not remove responsibility for behavior. 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 in-service evidence 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 PTSD or another mental health condition, other than alcohol use disorder."

After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your NJPs and refusal of alcohol rehabilitation treatment, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and found that your conduct showed a complete disregard for military authority and regulations. Further, the Board concurred with the AO and determined there is insufficient evidence to attribute your misconduct to PTSD or another mental health condition, other than alcohol use disorder. As explained in the AO, problematic alcohol use is incompatible to military readiness and does not remove responsibility for behavior. The Board noted you were evaluated by a qualified medical professional, diagnosed with a psychological dependence on alcohol, and refused rehabilitation treatment.

As a result, the Board concluded significant negative aspects of your service outweigh the positive aspects and continues to warrant a GEN characterization. While the Board carefully considered the evidence you submitted in mitigation, 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,

4/18/2024

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