



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. 7743-23
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 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 15 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 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. Although you were afforded an opportunity to submit a rebuttal to the AO, you chose not to do so.

The Board determined that your personal appearance, with or without counsel, would not materially add to their understanding of the issues involved. Therefore, the Board determined that a personal appearance was not necessary and considered your case based on the evidence of record.

You enlisted in the United States Navy and had an Honorable period of service from 16 December 1978 to 15 December 1981. On your enlistment application, you acknowledged a pre-service arrest for Driving While Ability Impaired (DWAI). During this initial period of service, you also received non-judicial punishment on 16 July 1980 for violating Uniform Code of Military Justice (UCMJ) Article 92, for failure to obey a lawful order, and Article 112, for being drunk on duty. You did not appeal this NJP.

You reenlisted on 1 April 1982. On 8 November 1985, you received your second NJP for violating UCMJ Article 111, for driving under the influence of alcohol (DUI). You did not appeal this NJP. You were formally counseled for this misconduct and were notified that further infractions could result in judicial processing and/or administrative separation. On 20 December 1985, you were convicted in █ Justice Court on charges of DUI. You were sentenced to 48 hours in jail, \$720.00 fine, 30 hours of community service, and three years' probation. On 23 December 1985, you were enrolled in a Level II Alcohol Treatment Program and successfully completed the program on 31 January 1986. The military again formally counseled you on your repeated misconduct and put you on notice that further infractions could result in judicial processing and/or administrative separation.

On 29 January 1988, you received your third NJP for violating UCMJ Article 89, for disrespect to a commissioned officer, and Article 134, for drunk and disorderly conduct and communicating a threat. You did not appeal this NJP. Consequently, you were notified that you were being processed for an administrative discharge by reason of pattern of misconduct and civilian conviction. You elected your right to consult with qualified counsel and your right to present your case at an administrative separation board (ADB). On 11 March 1988, the ADB found, by a vote of three to zero, that the bases were met and recommended your separation with an Other Than Honorable (OTH) characterization of service. Your Commanding Officer (CO) agreed with the board and recommended your separation with an OTH. The CO noted that you had previously completed in-patient alcohol treatment and were not amenable to further rehabilitation. Specifically, he stated you "refused to comply with alcohol restrictions placed upon him during Level III treatment or to use alcohol in moderation..." He also reported that since your separation board, you were "arrested by civil authorities again for DUI and is currently in the █ County Jail" in violation of your probation from your 20 December 1985 civilian DUI conviction.

Prior to your separation, you had a physical examination wherein you denied any mental health concerns and reported to be in "good" health. On 7 April 1988, you were discharged from the Navy due to your misconduct with an OTH characterization of service and assigned an RE- 4 reenlistment 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, (b) your contention that you were struggling with mental health issues during service, and (c) the impact that your mental health issues had on your behavior during service. For purposes of clemency and equity consideration, the Board noted that you provided documentation related to your post-service accomplishments and character letters.

In your petition, you contend that personal stressors, including family and parental stress, contributed to mental health concerns, and ultimately led to your separation. You explain that these stressors contributed to your alcohol abuse. You provided evidence of post-service diagnoses of Parkinson's disease and Dementia. 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 22 February 2024. The Ph.D. noted 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. Problematic alcohol use is incompatible with military readiness and discipline and does not remove responsibility for behavior. Unfortunately, he has provided no medical evidence of another mental health condition. His misconduct appears to be consistent with alcohol use disorder, rather than evidence of another mental health condition incurred in or exacerbated by military 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 mental health condition that may be attributed to military service. There is insufficient evidence to attribute his misconduct to a mental health condition, other than alcohol use disorder."

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 your mental health concerns and the possible adverse impact on your service. Specifically, the Board felt that your misconduct, as evidenced by your NJPs and civilian conviction, outweighed these mitigating factors. The Board considered the seriousness of your misconduct and the fact that it involved multiple DUIs and significant alcohol abuse. 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 your misconduct was contrary to Navy core values and policy and likely had a detrimental impact on mission accomplishment.

In making this determination, the Board concurred with the AO that problematic alcohol use is incompatible with military readiness and discipline and does not remove responsibility for behavior. Even if you did not have control over your alcohol consumption, you repeatedly made the conscientious decision to get behind the wheel, placing not only yourself at risk but the community as well. In service you were appropriately referred for psychological evaluation, diagnosed with alcohol use disorder, and provided rehabilitation treatment. Your misconduct appears to be consistent with alcohol use disorder, rather than evidence of another mental health condition incurred in or exacerbated by military service. The Board felt that the post-service diagnoses of Parkinson's disease and Dementia are temporally remote to your service and lack

sufficient nexus to the underlying misconduct. The Board found 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 should otherwise not be held accountable for your actions. Problematic alcohol use is incompatible with military readiness and discipline. Finally, absent a material error or injustice, the Board declined to summarily upgrade a discharge solely for the purpose of facilitating veterans' benefits or enhancing educational or employment opportunities.

As a result, the Board determined your conduct constituted a significant departure from that expected of a Sailor and continues to warrant an OTH characterization. While the Board carefully considered the evidence you submitted in mitigation and empathized with you based on your current medical condition, 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.

Regarding your desire for Department of Veterans Affairs (VA) medical benefits, the Board determined you may be eligible based on your previous period of Honorable service. The Board recommends you contact your nearest VA office and reapply for benefits using your DD Form 214 issued for the period of 16 December 1978 to 15 December 1981.

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,

4/23/2024

