



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

██████████
Docket No. 8329-23
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 22 May 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. Navy and entered active duty on 6 September 2000. On 16 June 2003, you completed IMPACT, an education program providing all necessary information needed to make informed decisions regarding the responsible use of alcohol. On 27 September 2003, you were arrested by ██████████ Police Department for obstructing government operations, disorderly conduct, and public intoxication. After your arrest, you were uncooperative during the CAAC alcohol screening process and refused to take responsibility for your actions. Consequently, you received non-judicial punishment (NJP), on 24 October 2003, for violation of a general order,

and drunk and disorderly conduct. Subsequently, you were notified of administrative separation for alcohol abuse rehabilitation failure and you elected to make a statement. The Commanding Officer (CO) made his recommendation that you be discharged with a General (Under Honorable Conditions) (GEN) characterization. You were so discharged on 23 January 2004.

Post-discharge, you applied to the Naval Discharge Review Board (NDRB) for relief. The NDRB denied your request, on 5 September 2013, after determining your discharge was proper as issued.

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 contentions that you were trying to self-medicate your undiagnosed condition of Bipolar disorder, you had exemplary reviews despite your trouble with alcohol abuse, and you used alcohol as a way to treat your undiagnosed condition. For purposes of clemency and equity consideration, the Board noted you provided an advocacy letter, medical documents, your Department of Veterans Affairs rating document, and a personal statement.

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 1 April 2024. The Ph.D. stated in pertinent part:

The Petitioner submitted a letter from his wife, VA compensation and pension rating indicating 70% service-connection for Bipolar II Disorder, VA Disability and Benefits Questionnaire (DBQ) and outpatient records where he was treated for ADHD and Bipolar II in 2019 and 2021 respectively. The DBQ noted post-service diagnoses of Major Depressive Disorder and Alcohol Dependence dated September 2019. He was treated by the same nurse practitioner who diagnosed him with ADHD, Inattentive Type in 2019, and then added a diagnosis of Bipolar II Disorder in 2021. There is no evidence that the Petitioner was diagnosed with a mental health condition while in military service, or that he exhibited any psychological symptoms or behavioral changes indicative of a diagnosable mental health condition. Despite denying problems with alcohol and attending IMPACT, he engaged in alcohol-related misconduct again. He submitted evidence of post-service diagnoses of Bipolar II Disorder, Major Depressive Disorder and Alcohol Use Disorder that are temporally remote to service. His personal statement is not sufficiently detailed to establish clinical symptoms or provide a nexus with his misconduct. Additional records (e.g., post-service mental health records describing the Petitioner's diagnosis, symptoms, and their specific link to his misconduct) would aid in rendering an alternate opinion.

The Ph.D. concluded, "it is my considered clinical opinion there is insufficient evidence of a mental health condition that may be attributed to military service. There is insufficient evidence that his misconduct could be attributed to a mental health condition."

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 NJP and refusal to cooperate in CAAC screening, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact that it included an alcohol related incident after receiving treatment. Further, the Board concurred with the AO and determined there is insufficient evidence that your misconduct could be attributed to a mental health condition. As explained in the AO, your personal statement is not sufficiently detailed to establish clinical symptoms or provide a nexus with your misconduct. Finally, the Board concluded that your discharge was proper and equitable under standards of law and discipline and that the discharge accurately reflects your conduct during your period of service, which was terminated by your separation with a GEN.

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,

6/10/2024

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