



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. 10657-23
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 11 July 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 Kurta Memo, the 3 September 2014 guidance from the Office of the Secretary of Defense concerning discharge upgrade requests by Veterans claiming post-traumatic stress disorder (PTSD) (Hagel Memo), and the 24 February 2016 guidance from the Principal Deputy Under Secretary of Defense concerning discharge upgrade requests by PTSD or TBI (Carson Memo), (collectively "the Clarifying Guidance"). The Board also reviewed a 24 May 2024 advisory opinion (AO) from qualified medical professionals. Although you were provided an opportunity to respond 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.

A review of your record shows that you served in the Marine Corps. Your record does not appear to include your Certificate of Release or Discharge from Active Duty (DD Form 214),

and you did not provide a copy with your petition; however, your record contains an Individual Separation Information document that reflects your initial date of active duty in the Marine Corps was 13 January 2014. In July 2015, you presented to medical with symptoms of what was later diagnosed as Crohn's disease and you were placed on light limited duty. On or about 29 June 2016, you were arrested for driving under the influence and, as a result, your command referred you for a substance abuse evaluation. You subsequently underwent the evaluation at [REDACTED] on 6 July 2016. Among other conclusions, the evaluation noted that you had a high probability of a substance abuse disorder. On 14 July 2016, your Crohn's disease diagnosis was reviewed by a Medical Evaluation Board (MEB), which recommended that you be referred to the Physical Evaluation Board (PEB). According to the 24 May 2024 AO, you received a concussion a few days after the MEB for which you received medical treatment. According to your written statement in support of your petition, on 19 July 2016, you were issued a court-ordered "Order of Protection" from your ex-girlfriend. You explained that this order was dismissed on 5 August 2016.

On 29 July 2016, you received nonjudicial punishment for disobeying an order or regulation due to driving a motor vehicle after consuming alcohol. Thereafter, you received a Page 11 written counseling warning you of your violation of the Uniform Code of Military Justice (UCMJ). Next, according to your written statement, you received nonjudicial punishment, on 8 September 2016, for breaking restriction. You reported that you received a reduction in paygrade to E-1. On 26 September 2016, you received another Page 11 counseling advising you of your UCMJ violations regarding dereliction of duties, failure to obey order or regulation, and destruction of government property. According to your written statement and your official records, your last day in the Marine Corps was 21 October 2016; the reason for your discharge was pattern of misconduct, and it was characterized as Other Than Honorable.

In your petition, you request to have your narrative reason for separation changed from "Pattern of Misconduct" to "Medical Retirement," and that your discharge characterization be upgraded from "Other than Honorable" to "Honorable." In support of your petition, you assert that while you were on active duty, you were diagnosed with Crohn's disease, as well as alcohol use disorder, and that you were to be processed through the Disability Evaluation System (DES). In further support of your petition, you provided a written personal statement, in which you provided a chronology of events, including your evaluation for Crohn's disease, assaults from your girlfriend's father, and your DUI. You also requested that the Board consider your outstanding post-service conduct, which demonstrates your efforts to show restorative value to your character. In this regard, following your discharge, you sought employment and finally found your place as a union carpenter out of [REDACTED], where you work with other prior service members. You explained that you participated in work for residents in [REDACTED], working for the city of [REDACTED] itself, assisted in the construction of a military readiness center, and that you have been pursuing a bachelor's degree in Operation Management, where you have maintained a 4.0 grade point average for approximately two years.

In order to assist it in reviewing your petition, the Board obtained the AO, which was prepared by both a Medical Doctor and a Licensed Clinical Psychologist. This AO stated in pertinent part:

There is evidence that the Petitioner received a head injury in service, with treatment of some residual symptoms that could be consistent with TBI. There is in-service evidence of treatment for trauma, but no evidence of a diagnosis of PTSD. There is evidence of an Adjustment Disorder diagnosis, that appears to have resolved as the Petitioner received treatment for his alcohol use disorder and his medical symptoms were better controlled. There is evidence of a diagnosis of Crohn's disease that did not exist prior to enlistment for which a MEB determined he was unable to perform his duties due to his Crohn's disease symptoms and referred him to the Physical Evaluation Board for final adjudication of unfitness. Though Petitioner's service record is incomplete, it appears his PEB processing was terminated when his command instead elected to process him for a misconduct discharge. Petitioner was administratively separated for misconduct. There is evidence of a severe alcohol use disorder during military service that preceded his concussion incident. Problematic alcohol use is incompatible with military readiness and discipline and does not remove responsibility for behavior. Unfortunately, available records are not sufficiently detailed to provide a nexus with his misconduct, given his continued alcohol-related misconduct while he was receiving treatment to address the concern. 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 AO concluded, "it is my clinical opinion there is in-service evidence of diagnoses of concussion, alcohol use disorder, and another mental health condition that may be attributed to military service. There is evidence of an in-service diagnosis of Crohn's Disease and referral to the PEB. There is insufficient evidence of a diagnosis of PTSD. There is insufficient evidence to attribute his misconduct to TBI or another medical or mental health condition, other than alcohol use disorder."

The Board reviewed your petition and the material that you provided in support, and disagreed with your rationale for relief. In keeping with the letter and spirit of the Clarifying Guidance, the Board gave liberal and special consideration to your record of service, and your contentions about any traumatic or stressful events you experienced, and their possible adverse impact on your service. In its review of your petition, the Board substantially concurred with the findings of the AO. Specifically, the Board agreed with AO in that your misconduct, while you were on active duty, was not mitigated by any conditions and that your command appropriately processed you for administrative separation in lieu of processing you through the PEB. In other words, during your service, your command, acting within its discretionary authority, determined that your misconduct processing took precedence over the disability processing, and the Board found this to be authorized and supported by substantial evidence. In sum, in its review and liberal consideration of all the evidence, the Board did not observe any error or injustice in your naval records. Accordingly, given the totality of the circumstances, the Board determined that your request does not merit relief.

Regarding your request for a discharge upgrade, the Board determined you have not yet exhausted your administrative remedies by applying to the Navy Discharge Review Board (NDRB). Therefore, the Board concluded that aspect of your application is not yet ripe for the

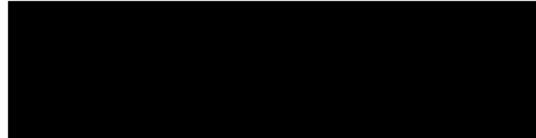
Board's consideration. You may apply to the NDRB by completing a DD Form 293 (<https://www.secnav.navy.mil/mra/CORB/Documents/DD0293.pdf>) and submitting it to:

Secretary of the Navy Counsel of Review Boards
ATTN: Naval Discharge Review Board
720 Kennon Ave SE Suite 309
Washington Navy Yard, DC 20374-5023

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,

8/1/2024



Executive Director

Signed by: [Redacted]