



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. 10806-23
Ref: Signature Date

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Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to Title 10, United States Code, Section 1552. 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 24 June 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). The Board also considered the advisory opinion (AO) furnished by a qualified mental health professional, dated 6 May 2024. Although you were afforded an opportunity to submit an AO rebuttal, you chose not to do so.

You enlisted in the Navy and began a period of active duty on 5 May 2015. In the Fall of 2016, you attended a screening conducted by SARP as a result of an alcohol related incident after the Navy Ball. On 24 January 2017, you received nonjudicial punishment (NJP) for failure to obey a lawful order, making a false official statement, assault, and reckless endangerment. On 23 February 2017, you were evaluated by a medical officer who determined that you met the criteria for alcohol use disorder and recommended you for Level I Alcohol Outpatient Program

treatment. As part of your treatment, you were instructed to abstain from alcohol consumption. On 9 March 2017, you acknowledged and signed your alcohol continuing care plan and were advised not to consume alcohol. On 10 March 2017, you successfully completed your Level I Outpatient Program treatment.

On 8 February 2018, you were identified as a SARP rehabilitation failure due to your failure to show up to several group appointments despite adequate prior notice. You also failed to meet regularly with your command DAPA, and random laboratory test were consistent with ongoing and excessive alcohol use despite being required to maintain abstinence. Consequently, you were processed for administrative separation.

Unfortunately, the documents pertinent to your administrative separation are not in your official military personnel file (OMPF). Notwithstanding, the Board relies on a presumption of regularity to support the official actions of public officers and, in the absence of substantial evidence to the contrary, will presume that they have properly discharged their official duties. Your Certificate of Release or Discharge from Active Duty (DD Form 214), reveals that you were separated on 30 August 2018 with a General (Under Honorable Conditions) (GEN) characterization of service, your narrative reason for separation is "Alcohol Rehabilitation Failure," your separation code is "JPD," and your reenlistment code is "(RE) 4."

Post-discharge, you applied to the Naval Discharge Review Board (NDRB) for relief. On 24 September 2019, the NDRB denied your request after concluding 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 Wilkie Memo. These included, but were not limited to, your desire for a discharge upgrade and contentions that: (a) your discharge was related to behavior and incidents that occurred due to your undiagnosed mental health condition, (b) you have new evidence which support that your discharge was related to your mental health condition, (c) you assert that your mental health conditions were contributing factors to your alcohol abuse, (d) you did not received any additional counseling or assistance from mental health providers, (e) your depressive and mixed anxiety disorders greatly increased your alcohol substance abuse use due to extenuating circumstances. For purposes of clemency and equity consideration, the Board noted you did provide a copy of a decision letter issued by the Department of Veterans Affairs.

As part of the Board's review, the Board considered the AO. The AO stated in pertinent part:

Petitioner was appropriately referred for psychological evaluation and properly evaluated during her enlistment. Her adjustment and alcohol use disorder diagnoses were based on observed behaviors and performance during her period of service, the information she 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. Her in-service misconduct appears to be consistent with her diagnosed alcohol use disorder. There is insufficient evidence of error in her in-service

treatment. 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 a mental health condition that may be attributed to military service. There is insufficient evidence of error in her in-service treatment."

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 alcohol rehabilitation failure, 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. Additionally, the Board concurred with the AO that there is insufficient evidence of error in your in-service treatment. As explained in the AO, your in-service misconduct appears to be consistent with your diagnosed alcohol use disorder. Therefore, the Board was not persuaded by your contentions regarding a mental health condition.

As a result, the Board concluded significant negative aspects of your service outweighed 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 the 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,

7/10/2024

