



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

█
Docket No. 0062-24
Ref: Signature Date

█
█
█
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 15 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 Secretary of Defense regarding discharge upgrade requests by Veterans claiming post-traumatic stress disorder (PTSD) (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. Although you were provided an opportunity to respond to the AO, you chose not to do so.

You enlisted in the Navy and commenced active duty on 9 July 1990. On 8 April 1992, you were in an unauthorized absence (UA) status for five hours, thirty minutes. On 19 April 1992, you were UA for one hour, fifty-five minutes. On 28 April 1992, you were UA for one hour, forty minutes. On 28 April 1992, you were UA for one hour, forty minutes, returned, and then commenced another period of UA that ended in your surrender on 30 April 1992. On 8 May 1992, you were UA for five hours, fifty minutes. On 10 June 1992, you were UA for thirteen hours, forty minutes. On 11 June 1992, you received non-judicial punishment (NJP) for unauthorized absence (UA), willfully disobeying a First Class Petty Officer, failure to obey a lawful order by underage drinking, and communicating a threat to a First Class Petty Officer, a

Second Class Petty Officer, and a Seaman. On 30 June 1992, you were found guilty, in a civilian court, of using profane language. On 13 July 1992, you were issued an administrative remarks (Page 13) counseling concerning deficiencies in your performance and/or conduct. You were advised that any further deficiencies in your performance and/or conduct may result in disciplinary action and in processing for administrative discharge. On 14 July 1992, you were UA for 1 hour, 15 minutes. On 28 August 1992, you received NJP for disorderly conduct and failure to obey a lawful order by underage drinking.

On 4 September 1992, you commenced an eighteen-day period of UA, during which you were confined by civil authorities and convicted of carrying a concealed weapon. You were sentenced to a fine and ninety days of civilian confinement. On 28 September 1992, you were UA for thirteen hours, fifteen minutes. On 4 November 1992, you received NJP for willful disobedience of a Chief Petty Officer and a First Class Petty Officer, destruction of government property, underage drinking, drunk and disorderly conduct, and drunk and disorderly conduct onboard a ship. You were later sent to medical for an alcohol use evaluation and found to be an alcohol abuser.

Consequently, you were notified of pending administrative separation processing with an Under Other Than Honorable conditions (OTH) discharge by reason of misconduct due to commission of a serious offense. You elected to consult with legal counsel and requested an administrative discharge board (ADB).

On 16 January 1993, you received NJP for two specifications of willful disobedience of a superior commissioned officer by failing to report for extra duty. Subsequently, you waived your right to have your case heard by an ADB. The Separation Authority directed your discharge with an OTH characterization of service, and you were so discharged on 2 April 1993.

Post-discharge, you applied to the Naval Discharge Review Board (NDRB) for a discharge upgrade. The NDRB denied your request for an upgrade, on 23 August 2007, based on their determination that 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 to change your discharge characterization of service and your contentions that you believe you are entitled to Department of Veterans Affairs (VA) benefits, you served during █, your records were falsified by your recruiter, and you were discharged “without medical findings – PTSD.” For purposes of clemency and equity consideration, the Board noted the General Educational Development (GED) certificate you provided.

As part of the Board’s review process, a qualified mental health professional reviewed your contentions and the available records and issued an AO dated 21 May 2024. The AO stated in pertinent part:

Petitioner contends he incurred Post Traumatic Stress Disorder (PTSD) during military service, which may have mitigated the circumstances of his separation.

There is no evidence that he was diagnosed with a mental health condition other than alcohol use disorder during military service, or that he exhibited any psychological symptoms or behavioral changes indicative of a diagnosable mental health condition. He has provided no medical evidence in support of his claims. Problematic alcohol use is incompatible with military readiness and discipline and does not remove responsibility for behavior. His misconduct appears consistent with his alcohol use disorder and not indicative of another mental health condition.

The AO concluded, “it is my clinical opinion there is insufficient evidence of a diagnosis of PTSD or another mental health condition 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 your potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your NJPs and civilian convictions, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the likely negative impact your repeated misconduct had on the good order and discipline of your command. The Board also considered the likely discrediting effect your civil convictions had on the Navy. Further, the Board noted that you were given multiple opportunities to address your conduct issues, but you continued to commit misconduct, which ultimately led to your OTH discharge. Additionally, the Board concurred with the AO and determined that 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, your misconduct appears consistent with an alcohol use disorder and not indicative of another mental health condition. Furthermore, 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. Finally, the Board found no evidence that supports your contention that your recruiter falsified your naval records.

As a result, the Board concluded your conduct constituted a significant departure from that expected of a service member and continues to warrant an OTH 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. 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,

7/30/2024

