



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

██████████
Docket No. 1339-24
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 Board waived the statute of limitation 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 6 September 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, and applicable statutes, regulations, and policies, to include to 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) of a qualified mental health provider. Although you were afforded an opportunity to submit a rebuttal, you chose not to do so.

You initially enlisted in the Army National Guard but received an entry level separation due to failure to adapt. You then enlisted in the Navy with a waiver for that discharge, and for a pre-service history of marijuana use, and began a period of active duty on 24 March 1999.

On 22 June 2000, you were subject to nonjudicial punishment (NJP) for a violation of the Uniform Code of Military Justice (UCMJ) under Article 91 after being disrespectful in language and deportment toward a superior petty officer. An administrative counseling entry, with warnings regarding potential separation if your misconduct continued, documented that you had stated, "I should get up and slap the shit out of you," or words to that effect. At the time of this particular incident, you were assigned to the ██████████ however, you were

transferred shortly thereafter to the ██████████. On 30 May 2001, you were subject to a second NJP due to a period of absence without authority for 16 hours and 30 minutes. In spite of this second NJP, you again continued serving until, in March 2002, following a screening for alcohol use issues, you were referred to substance abuse rehabilitation. While in rehabilitation treatment, you requested to return to your ship. Upon doing so, you were advised that you would be subject to processing for administrative separation, under the mandatory processing basis of alcohol rehabilitation failure if you did not complete the program. Notwithstanding this warning, you elected to quit your rehabilitation treatment and return to your ship.

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 from the Navy on 22 March 2002 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."

You received two enlisted performance evaluations during your active service, one from the ██████████ and one from the ██████████, with a final trait average of 2.33. Both of these were issued prior to 15 October 2001. After 15 October 2001, the minimum trait average required for an Honorable discharge was 2.5.

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 upgrade your and contentions that you were unaware of having developed a mental health condition during your military service but experienced depression due to post-traumatic stress disorder after being released from active duty service. You also claim to receive disability benefits from the Department of Veterans Affairs (VA). With respect to your mental health claims, you submit the following assertions for consideration: that you were targeted by officers and those higher in your chain of command in response to a female E-4 who had reported you for sexual harassment after you used terms like "shortie" and "sweety" when interacting with her, they threw the book at you during your first NJP, you were in trouble every four to six months for the next two years, you were assaulted by an E-5 who threw and hit you with a paint can, your response that you should "smack the shit out of" her was concurrent with her assault, you began drinking heavily approximately one year after arriving at your ship and did not realize that you were trying to drink away disappointment in yourself, you asked to go to the DAPA for alcohol screening but they took your identification card and confined you for three days on the ship, and you fell into a downward spiral of alcohol and marijuana use after being discharged until attending treatment and rehabilitation at a VA facility. For the purpose of clemency and equity consideration, you also submitted VA documents, a personal statement, and three letters of support regarding your mental health struggles.

Because you contend that PTSD or another mental health condition affected your discharge, the Board also considered the AO. The AO stated in pertinent part:

There is no evidence that he was diagnosed with a mental health condition in military service other than alcohol use disorder. Problematic alcohol use is incompatible with military readiness and discipline and does not remove responsibility for behavior. Post-service, the VA has granted service connection for a chronic mental health condition. Unfortunately, available records are not sufficiently detailed to establish 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) may aid in rendering an alternate opinion.

The AO concluded, "it is my clinical opinion there is post-service evidence from the VA of 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 these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your NJPs 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 clinical conclusion of the AO that there is insufficient evidence to attribute your misconduct to a mental health condition other than alcohol use disorder. As explained in the AO, problematic alcohol use is incompatible with military readiness and discipline and does not remove responsibility for behavior.

Regarding your specific contentions, the Board observed no evidence related to the initial incident you referenced regarding an allegation of sexual harassment, to include any NJP in relation to such allegations. Although you claim to have been in trouble every four to six months for over two years, the Board identified only two NJP actions, one in June 2000 and the other nearly a year later in May 2001, with no additional administrative counseling advisories unrelated to the misconduct of those NJPs. Additionally, the Board noted that, even if your administrative separation notification included misconduct, your separation code reflects not only that the basis for your separation was alcohol rehabilitation failure, the evidence of which is well documented in your service records. Further, your separation code, which identifies that you were not entitled to a hearing before an administrative separation board, reflects that this processing was via notification procedures; therefore, your characterization of service should have been, and by review of the available records, was identified as under honorable conditions due to being issued type warranted by service record. The Board noted the unique timing of the performance evaluations you received with respect to having a trait average at one point which would have qualified for an honorable discharge but, due to changes in the required trait average, did not meet the threshold required for an honorable discharge at the time of your separation. Your record contains no record of trait marks issued from 15 October 2001 until the date of your discharge on 22 March 2002; however, the Board found that, absent evidence to the contrary, a presumption of regularity applies in that your discharge is presumed to have been properly issued under honorable conditions after accounting for all relevant trait marks during your enlistment.

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

