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

[redacted]
Docket No. 1605-24
Ref: Signature Date

[redacted]

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 16 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 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)/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. 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.

You enlisted in the Navy and began a period of active duty on 23 March 1990. On 13 March 1991, you were referred for a drug and alcohol screening after a drunk and disorderly incident.

On 12 April 1991, you received nonjudicial punishment. On 28 May 1991, you received a drug and alcohol evaluation which determined you are possibly early-stage dependent on alcohol and recommended you for Level II program. On 25 November 1991, you received nonjudicial punishment (NJP) for insubordinate conduct, failure to obey a lawful order, drunk and disorderly conduct, and indecent language. On 5 December 1991, you were reevaluated following the previously mentioned alcohol related incident and considered an alcohol abuse aftercare failure. The evaluation further documented you were unwilling to enter a recommended Level III inpatient program. Additionally, in May 1992, you were involved in a motor vehicle accident and treated at medical where they noted the smell of alcohol, although you were not charged with driving under the influence and no record of a blood alcohol concentration exam was found. Lastly, your Official Military Personnel File reflects that you were involved in an incident of drunk and disorderly conduct on 11 October 1993.

Consequently, you were notified that you were being recommended for administrative discharge from the Navy by reason of misconduct due to commission of a serious offense (COSO) and alcohol abuse rehabilitation failure, at which time you elected your rights to consult with counsel and to have your case heard before an administrative discharge board (ADB). On 19 January 1994, an ADB was convened and determined that a preponderance of the evidence supporting a finding of alcohol rehabilitation failure and recommended you be discharged from the Navy with a General (Under Honorable Conditions) (GEN) characterization of service. Your separation authority concurred with the administrative discharge board's recommendation, and on 3 February 1994, you were so discharged.

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 discharge character of service and your contentions that you were discharged for alcohol abuse and not for mental health illness, which you believe to be the reason behind your alcohol use. For purposes of clemency and equity consideration, the Board considered the documentation you provided in support of your application.

As part of the Board's review, a qualified mental health professional reviewed your contentions and the available records and provided the Board with an AO on 18 July 2024. The AO stated in pertinent part:

> During military service, the Petitioner was diagnosed with mental health concerns, including adjustment disorder and alcohol use disorder. Problematic alcohol use is incompatible with military readiness and discipline and does not remove responsibility for behavior. Temporally remote to his military service, he has received a diagnosis of Bipolar I Disorder, which a VA clinician has determined is a progression of his in-service adjustment disorder. It is possible that alcohol use may have been exacerbated by undiagnosed prodromal symptoms of Bipolar I Disorder, but it is difficult to attribute his problematic alcohol use solely to medication of other mental health symptoms. 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 (adjustment disorder) that may be attributed to military service. There is post-service evidence from the VA of a mental health condition (Bipolar I Disorder) that may be attributed to his in-service mental health concerns. There is insufficient evidence to attribute his misconduct solely to a 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 inability to comply with the requirements of the alcohol rehabilitation program, outweighed these mitigating factors. In making this finding, the Board considered the fact you were provided multiple opportunities to overcome your alcohol abuse through counseling and treatment, yet you continued to commit alcohol related misconduct. The Board also considered the negative impact your conduct likely had on the good order and discipline of your command. Further, the Board concurred with the AO that, while there is in-service evidence of a mental health condition and post-service evidence from the Department of Veterans Affairs of a mental health condition that may be attributed to military service, there is insufficient evidence to attribute your misconduct solely to a mental health condition other than alcohol use disorder. As the AO explained, it is difficult to attribute your problematic alcohol use solely to medication of other mental health symptoms. Therefore, the Board determined that the evidence of record did not demonstrate that you were not mentally responsible for your conduct or that you should otherwise not be held accountable for your actions.

As a result, the Board determined significant negative aspects of your active duty service outweighed the positive 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,

10/31/2024

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