



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



Docket No. 2007-24  
Ref: Signature Date

[REDACTED]

Dear [REDACTED]

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 7 August 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 and your rebuttal response to the AO.

You enlisted in the Navy and began a period of active duty on 22 October 2012. During the period from January 2014 to March 2014, you participated in an intensive outpatient alcohol treatment course with the Substance Abuse Rehabilitation Program (SARP) after receiving a diagnosis of alcohol abuse. On 1 April 2014, you received non-judicial punishment (NJP) for unauthorized absence and failure to obey order and regulation. Additionally, you were issued an administrative remarks (Page 13) retention warning formally counseling you concerning deficiencies in your performance and conduct. The Page 13 expressly warned you that any

further deficiencies in your performance and/or conduct may result in disciplinary action and in processing for administrative separation.

Unfortunately, the documents pertinent to your administrative separation proceedings are not in your official military personnel file. 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 record shows that, on 6 August 2015, your commanding officer (CO) recommended to the separation authority (SA) your administrative discharge from the Navy with a General (Under Honorable Conditions) (GEN) characterization of service. As part of the CO's recommendation, the CO stated in pertinent part:

[Petitioner] failed to fulfill his obligation as a United States Sailor by substance use disorder; alcohol abuse. In the opinion of the diagnosing medical professional, he is diagnosed with meeting the criteria for a substance abuse/dependence. This behavior of continued alcohol abuse renders him unsuitable for continued military service.

The SA directed your GEN discharge from the Navy by reason of alcohol rehabilitation failure and, on 12 November 2014, you were so discharged.

Post-discharge, you applied to the Naval Discharge Review Board (NDRB) for a discharge upgrade. The NDRB denied your request for an upgrade, on 4 June 2015, 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 upgrade your discharge character of service and change your narrative reason for separation. You contend that: (1) your characterization of service should be Honorable because the quality of your service generally met the standard of acceptable conduct and performance for military personnel, (2) the quality of your service was honest and faithful, and the positive aspects of your conduct or performance of duty outweighed the negative aspects as documented in your service record, (3) your in-service PTSD mitigated the misconduct that caused your GEN discharge, (4) your time in the military was difficult, both physically and emotionally, (5) you are currently suffering from PTSD, depression, and physical disabilities due to your service, (6) you were battling mental health disorder prior to and at the time of your discharge due to several stressful incidents that you experienced during your military service, and (7) the source of your military related depression can be attributed to the crystallization of pacifistic views, perceived reprisal for an act of whistleblowing, perceived emotional abuse, as well as inadequate treatment for disclosed feelings of depression as well as denied requests for substance abuse treatment. For purposes of clemency and equity consideration, the Board considered the documentation you provided in support of your application, including your personal statement describing the circumstances of your case.

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 14 June 2024. The AO stated in pertinent part:

During military service, Petitioner was diagnosed and offered treatment for alcohol and substance use disorders. Post-service, he has been granted service connection for another mental health condition. There is no evidence of a diagnosis of PTSD. Unfortunately, there is insufficient evidence to attribute his misconduct to a mental health condition other than alcohol and substance use disorder, given pre-service behavior that appears to have continued in service. 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 a 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 or substance use disorder."

In response to the AO, you submitted additional supporting documentation that provided clarification of the circumstances of your case. After reviewing your rebuttal evidence, the AO remained unchanged.

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 NJP and your 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 opportunities to overcome your alcohol abuse through counseling and treatment. 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 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 to a mental health condition other than alcohol or substance use disorder. As the AO explained, it appears your preservice conduct continued in service. 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.

Furthermore, the Board disagreed with your assessment of your performance. The Board observed that character of military service is based, in part, on conduct and overall trait averages which are computed from marks assigned during periodic evaluations. Your overall active-duty trait average calculated from your available performance evaluations during your enlistment was approximately 2.3 in conduct/military behavior. Navy regulations in place at the time of your discharge recommended a minimum trait average of 2.5 in conduct/military behavior, for a fully Honorable characterization of service; a minimum mark you failed to achieve due, in part, to your misconduct.

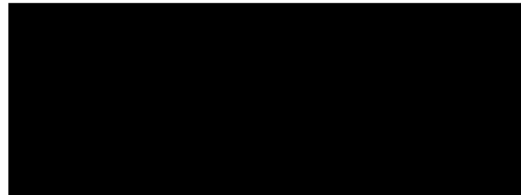
As a result, the Board determined significant negative aspects of your active duty service

outweighed the positive and continues to warrant a GEN characterization. While the Board commends your post-discharge accomplishments and 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 and inability to maintain your sobriety while on active duty. 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,

8/23/2024

A large black rectangular redaction box covers the signature area, obscuring the name and any handwritten notes or dates that might have been present.