



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. 4003-24

Ref: Signature Date

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Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to 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 25 October 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). Additionally, the Board also considered an advisory opinion (AO) furnished by qualified mental health provider. Although you were provided an opportunity to respond to the AO, you chose not to do so.

You enlisted in the U.S. Navy and began a period of active duty service on 22 January 1992. Your pre-enlistment physical examination, on 2 November 1992, and self-reported medical history both noted no psychiatric or neurologic issues, history, or symptoms. On your enlistment paperwork, you disclosed pre-service marijuana usage multiple times, as well as arrests for DUI and assault. On 8 January 1992, you received an enlistment waiver for a “non-minor misdemeanor.”

On 23 January 1993, you were injured in an alcohol-related incident. According to your medical records, you were walking, fell, and hit your face. At the time of your accident your blood alcohol content (BAC) was approximately 0.25.

On 13 July 1993, you underwent a drug and alcohol dependency evaluation at the Branch Medical Clinic, ██████████. The Medical Officer (MO) determined you were both an alcohol abuser and alcohol dependent. The MO determined that you required rehabilitation and recommended Level III NRC inpatient treatment and that you attend alcoholics anonymous (AA) meetings.

On 17 December 1993, you received non-judicial punishment (NJP) for: (a) two (2) separate assault specifications, (b) drunk and disorderly conduct, and (c) unlawful entry. At the time of your misconduct, your BAC was approximately 0.195. You did not appeal your NJP.

On 21 December 1993, you underwent another drug and alcohol dependency evaluation at BMC (NAS). The MO similarly determined you were both an alcohol abuser and alcohol dependent. The MO determined that you required rehabilitation and recommended Level III NRC inpatient treatment through the Department of Veterans Affairs (VA) prior to separation, and that you attend alcoholics anonymous (AA) meetings 3x/week.

On 5 January 1994, your command notified you of administrative separation proceedings by reason of misconduct due to the commission of serious offenses. You waived your rights to consult with counsel, submit statements, and to request a hearing before an administrative separation board.

On 10 January 1994, you expressly declined in writing the Navy's offer to receive in-patient alcohol rehabilitation treatment at a VA hospital. On 19 January 1994, your separation physical examination and self-reported medical history both noted no psychiatric or neurologic issues, symptoms, or conditions. Ultimately, on 28 January 1994, you were separated from the Navy for misconduct with an under Other Than Honorable conditions (OTH) discharge characterization and were assigned an RE-4 reentry code.

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 for a discharge upgrade and contentions that: (a) you suffered from an undiagnosed substance use disorder at the time of service, (b) you had a drinking problem and were not offered rehabilitation, and (c) you acknowledge wrongdoing but maintain that your drinking did not endanger lives at the time of the incident(s). For purposes of clemency and equity consideration, the Board considered the totality of the evidence you provided in support of your application.

A licensed clinical psychologist (Ph.D.) reviewed your contentions and the available records, and issued an AO dated 29 August 2024. As part of the Board's review, the Board considered the AO. The AO stated in pertinent part:

The Petitioner joined active duty Navy service in January 1992 with a waiver for pre-service alcohol related incidents to include DUI, assault and arrest followed by attendance in alcohol traffic school. He was seen in the ER in January 1993 following “fall on face while intoxicated with alcohol.” It was noted that he had a BAC of .25 at the time and was referred to his Command DAPA. Review of medical records note a drug and alcohol evaluation was conducted in July 1993. He was deemed alcohol dependent and referred to Level III inpatient treatment and AA meetings. A second drug and alcohol evaluation was conducted December 21, 1993. As a result of the evaluation, he was diagnosed with continued Alcohol Dependency and referred to inpatient treatment and AA meetings. He was counseled and offered inpatient treatment at the VA, which he declined.

There is no evidence that the Petitioner was diagnosed with a mental health condition (other than alcohol abuse/dependence) while in military service, or that he exhibited any symptoms of a mental health condition. His statement is not sufficiently detailed to provide a nexus with his misconduct.

The Ph.D.’s AO concluded, “it is my considered clinical opinion there is insufficient evidence of a mental health condition that may be attributed to military service. There is insufficient evidence that his misconduct could be attributed to a mental health condition.”

After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. In accordance with the Hagel, Kurta, and Wilkie Memos, the Board gave liberal and special consideration to your record of service and your contentions about any traumatic or stressful events you experienced and their possible adverse impact on your service. However, the Board concluded that there was no convincing evidence that you suffered from any type of mental health condition while on active duty, or that any such mental health condition was related to or mitigated the misconduct that formed the basis of your discharge. As a result, the Board concluded that your misconduct was not due to mental health-related conditions or symptoms. Additionally, even if the Board assumed that your misconduct was somehow attributable to any mental health conditions, the Board unequivocally concluded that the severity of your cumulative misconduct far outweighed any and all mitigation offered by such mental health conditions. The Board determined the record reflected that your misconduct was intentional, willful, and persistent, and demonstrated you were unfit for further service. The Board also determined that the evidence of record did not demonstrate that you were not mentally responsible for your conduct or that you should not be held accountable for your actions.

Additionally, the Board disagreed with your contention that you were not offered alcohol rehabilitation treatment. The Board noted that the record is clear and unambiguous that the Navy offered you inpatient alcohol rehabilitation treatment at a VA hospital for your alcohol dependency but, on 10 January 1994, you expressly declined in writing to receive such treatment.

The Board did not believe that your record was otherwise so meritorious as to deserve a discharge upgrade. The Board concluded that significant negative aspects of your conduct

and/or performance greatly outweighed any positive aspects of your military record. The Board determined that characterization under OTH conditions is appropriate when the basis for separation is the commission of an act or acts constituting a significant departure from the conduct expected of a Sailor.

As a result, the Board determined that there was no impropriety or inequity in your discharge and concluded that your misconduct and disregard for good order in discipline clearly merited your discharge. 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,

11/18/2024

