



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. 4092-24

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 4 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 a qualified mental health provider. Although you were provided an opportunity to submit an AO rebuttal, you chose not to do so.

You enlisted in the U.S. Navy and began a period of active duty service on 27 September 1988. Your enlistment physical examination, on 22 January 1988, and self-reported medical history both noted no neurologic or psychiatric conditions or symptoms, or counseling. On 28 September 1988, you acknowledged being briefed on the Navy's drug and alcohol abuse policy. On 29 April 1989, you reported for duty on board the █
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On 11 July 1989, you were convicted in the ██████████ of reckless driving. On 7 August 1989, you were convicted again in the ██████████, for stopping on a roadway.

On 1 September 1989, you received non-judicial punishment (NJP) for: (a) drunk & disorderly conduct, (b) indecent language, and (c) underage drinking. You did not appeal your NJP. On 18 October 1990, you received NJP for unauthorized absence (UA). You did not appeal your NJP. On the same day, your command issued you a "Page 13" retention/counseling warning (Page 13) documenting your chronic UAs from your place of duty. The Page 13 expressly advised you that any further deficiencies in your performance and/or conduct may result in disciplinary action and in processing for administrative separation.

On 21 November 1991, you received NJP for conduct prejudicial to good order and discipline. You did not appeal your NJP.

Consequently, your command notified you of administrative separation proceedings by reason of misconduct due to a pattern of misconduct and commission of a serious offense. You waived your rights to consult with counsel and to request a hearing before an administrative separation board.

In the interim, on 23 January 1992, your alcohol dependency determination revealed you were psychologically dependent on alcohol. However, you expressly refused the opportunity for inpatient alcohol rehabilitation treatment for a minimum of thirty (30) days prior to separation. On 10 February 1992, your separation physical examination and self-reported medical history both noted no neurologic or psychiatric conditions or symptoms. Ultimately, on 19 February 1992, you were separated from the Navy for misconduct with an 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) while stationed aboard the ██████████, one of your shipmates was stabbed two times in the chest and one time in the neck, and you jumped in to save his life by applying pressure before the ambulance arrived, however, he passed away in the parking lot while the ambulance crew tried to stabilize him, (b) you began to drink heavily after that day, (c) experiencing that traumatic event caused me to decline as a shipmate, (d) you would come to work hungover which caused you not to be a good shipmate, and you said some very inappropriate things to your shipmates which led to your discharge, (e) you have lived with those mistakes for a long time, and you have been in counseling for many years because of this, (f) you have been married to your wife over 20 years, and have been a commercial electrician for over 29 years, (g) your goal is to be buried with your father at ██████████, and (h) you understand you made mistakes as a young sailor and you are truly sorry for what you did. 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 19 August 2024. As part of the Board's review, the Board considered the AO. The AO stated in pertinent part:

During military service, the Petitioner was evaluated and diagnosed with an alcohol use disorder. Problematic alcohol use is incompatible with military readiness and discipline and does not remove responsibility for behavior. The Petitioner has provided no medical evidence to support his claims of PTSD. Unfortunately, available records are not sufficiently detailed to establish clinical symptoms in service or provide a nexus with his misconduct, particularly given pre-service behavior.

The Ph.D. concluded, "it is my clinical opinion there is insufficient evidence of a diagnosis of PTSD 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 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 of any nexus between any mental health conditions and/or related symptoms and your misconduct and determined that there was insufficient evidence to support the argument that any such mental health conditions 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. 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 all mitigation offered by such mental health conditions. The Board determined the record reflected that your misconduct was intentional and willful, 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.

The Board determined that you did not provide any convincing evidence to substantiate your purported traumatic precipitants that one of your shipmates was killed, and another shipmate committed suicide. Additionally, 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. Moreover, 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.

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 and

commends you for your post-discharge accomplishments, 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,

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