



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. 4741-24
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 30 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 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, which was previously provided to you. Although you were afforded an opportunity to submit a rebuttal, you chose not to do so.

You enlisted in the Navy and began a period of active duty on 1 July 1987. On 30 April 1990, when you were issued administrative counseling warning you to correct your problematic alcohol use and advising you to refrain from alcohol abuse or future alcohol related incidents. You completed an Honorable period of service and reenlisted on 31 May 1991. During your second period of enlistment, you had a single nonjudicial punishment in 1996, which included an offense of forgery. You reenlisted a second time and began a third period of service on 6 February 1997.

On 14 August 1997, you were subject to nonjudicial punishment for violations of the Uniform Code of Military Justice (UCMJ) for two specifications each under Articles 92 and 134 for

failure to obey a lawful order by consuming alcoholic beverages while in the Aftercare program and for adultery. Consequently, you were notified of processing for administrative separation for misconduct due to commission of a serious offense and for alcohol rehabilitation failure due to your alcohol-related incident after having completed level III rehabilitation treatment. Your involuntary separation was approved for the primary basis of commission of a serious offense, and you were discharged under Other Than Honorable (OTH) conditions 10 September 1997.

The Board carefully considered all potentially mitigating factors to determine whether the interests of justice warrant relief in your case in accordance with the Wilkie, Kurta, and Hagel Memos. This included, but was not limited to, your desire to upgrade your discharge for the purpose of disability and your contentions that you used alcohol to self-mediate symptoms of post-traumatic stress disorder (PTSD) and excessive stress, and that you participated in alcohol rehabilitation during service but feel that you were a rehabilitation failure because the system failed you. You state that your medical issues are directly related to your military service. For purposes of clemency and equity consideration, the Board noted you did not provide documentation describing post-service accomplishments or advocacy letters.

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

During military service, the Petitioner was diagnosed with an alcohol use disorder. Problematic alcohol use is inconsistent with military readiness and discipline and does not remove responsibility for behavior. There is no evidence of another mental health condition in military service, or that he exhibited any psychological symptoms or behavioral changes indicative of a diagnosable mental health condition. He has provided no medical evidence in support of his claims. Unfortunately, available records are not sufficiently detailed to establish clinical symptoms in service or provide 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 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."

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 NJP¹, 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. The Board observed that you were provided an opportunity to rehabilitate your alcohol abuse but chose to continue to abuse alcohol. Further, the Board considered the likely negative effect your conduct had on the good order and discipline of your unit. Finally, the Board concurred with the AO that there is insufficient evidence to attribute

¹ This refers to your 14 August 1997 NJP. Even though the Board discussed your NJP from your prior period of continuous Honorable service, the Board did not consider that misconduct for the purpose of determining whether your final characterization of service should be upgraded.

your misconduct to PTSD or another mental health condition. As explained in the AO, there is no evidence of another mental health condition in military service, or that you exhibited any psychological symptoms or behavioral changes indicative of a diagnosable mental health condition. 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 not be held accountable for your actions.

As a result, the Board concluded your conduct constituted a significant departure from that expected of a service member and continues to warrant an OTH characterization. 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. 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 the 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 is attached 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,

11/25/2024

