



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

█
Docket No. 4784-24

Ref: Signature Date

█
█
█

Dear █

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 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 21 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, 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, dated 6 September 2024, which was previously provided to you. Although you were afforded an opportunity to submit an AO rebuttal, you chose not to do so.

You enlisted in the Marine Corps and began a period of active duty on 11 August 1987. On 21 March 1988, you received nonjudicial punishment (NJP) for wrongfully consuming alcoholic beverages while underage. Consequently, you were counseled concerning your underage drinking and advised that failure to take corrective action could result in administrative separation. On 12 April 1988, you received a second NJP for two instances of unauthorized absence (UA) from appointed place of duty. Consequently, you were counseled concerning your periods of UA and advised that failure to take corrective action could result in administrative

separation. On 12 January 1989, you were counseled concerning a period of UA from appointed place of duty and advised that failure to take corrective action could result in administrative separation. On 19 January 1989, you were counseled concerning the consumption of alcoholic beverages in the barracks and advised that failure to take corrective action could result in administrative separation.

On 20 January 1989, you received a third NJP for a period of UA from appointed place of duty. On 28 February 1989, you were counseled concerning insubordination and disrespect towards a noncommissioned officer, and failure to report to your prescribed place of duty. You were advised that failure to take corrective action could result in administrative separation. On 28 April 1989, you were evaluated by medical officer and diagnosed with Alcohol Dependency. Between 30 May 1989 and 10 July 1989, you had two periods of UA totaling 18 days. On 18 September 1989, you received a fourth NJP for a period of UA and two instances of making and uttering worthless checks in the amount of \$1,400.00.

Consequently, you were notified of the initiation of administrative separation proceedings by reason of misconduct due to pattern of misconduct and you decided to waive your procedural rights. Your commanding officer (CO) recommended an Other Than Honorable (OTH) discharge characterization of service by reason of misconduct due to pattern of misconduct. After your administrative separation proceedings were determined to be sufficient in law and fact, the separation authority approved the CO's recommendation. On 6 December 1989, 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 for a discharge upgrade and contentions that you were diagnosed with PTSD and Bipolar Disorder and these conditions played a part on your discharge. For purposes of clemency and equity consideration, the Board noted you submitted copies of your medical diagnoses and certificate of birth.

As part of the Board's review, the Board considered the AO. The AO stated in pertinent part:

During military service, the Petitioner was diagnosed with an alcohol use disorder. There is no evidence that he was diagnosed with PTSD or another mental health condition in military service. Temporally remote to his military service, he has received diagnoses from civilian providers for PTSD and other mental health concerns that appear unrelated to his military service. 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 or another mental health condition 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 NJPs, 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. Additionally, the Board concurred with the AO that there is insufficient evidence that your misconduct could be attributed to PTSD or another mental health condition. As explained in the AO, there is no evidence that you exhibited any symptoms of a mental health condition other than alcohol use disorder. Finally, the Board noted you were given multiple opportunities to correct your conduct deficiencies but chose to continue to commit misconduct.

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. 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 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 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,

11/13/2024

█