



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. 5438-24
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 your application was not filed in a timely manner, the Board found it in the interest of justice to waive the statute of limitations and consider your application on its merits. A three-member panel of the Board, sitting in executive session, considered your reconsideration application on 9 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 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 the 25 July 2018 guidance from the Under Secretary of Defense for Personnel and Readiness regarding equity, injustice or clemency determinations (Wilkie Memo).

You enlisted in the U.S. Navy and began a period of active duty service on 20 August 1991. Your pre-enlistment physical examination, on 31 May 1991, and self-reported medical history both noted no psychological or neurological/behavioral issues or symptoms. You expressly specifically denied any previous alcohol abuse on your medical history. On 9 July 1993, you reported for duty on board the █ in █

On 1 April 1993, you received non-judicial punishment (NJP) for failing to obey a lawful order. You did not appeal your NJP. On 8 April 1993, civilian authorities in █

convicted you for the offense of “driving while ability impaired.” You were sentenced to pay a \$375 fine and your drivers license was suspended for ninety (90) days.

On 1 September 1994, you underwent an alcohol screening following a Command DAPA referral after you were involved in two (2) separate alcohol-related incidents on liberty overseas. The Counseling and Assistance Center (CAAC) staff determined you met the criteria for alcohol dependency and recommended that you attend Level III alcohol rehabilitation treatment, and also referred you to a Medical Officer (MO) for a dependency evaluation.

On 5 September 1994, you received NJP for: (a) unauthorized absence, (b) disrespect towards a superior commissioned officer, (c) failing to obey a lawful order, and (d) drunk and disorderly conduct. You did not appeal your NJP.

On 6 September 1994, your command notified you that you were being processed for an administrative discharge by reason of misconduct due to the commission of a serious offense and civilian conviction. You elected your rights to consult with counsel and to request a hearing before an administrative separation board (Adsep Board).

On 7 September 1994, a Medical Officer (MO) evaluated you for possible alcohol dependency. The MO determined that you did not reveal any evidence of psychosis or disabling neurosis, and that you did not require any detoxification. The MO, however, determined you were an alcoholic and psychologically dependent on alcohol. The MO recommend that you attend Level III inpatient treatment through the VA, but did not recommend you for further naval service.

On 8 September 1994, an Adsep Board convened in your case. At the Adsep Board you were represented by counsel. Following the presentation of evidence and any witness testimony, the Adsep Board members unanimously voted that misconduct occurred and recommended that you be separated with an under Other Than Honorable conditions (OTH) discharge characterization. On 4 October 1994, your command transferred you to the National Naval Medical Center (NNMC) at ██████████ ██████████ for treatment. Ultimately, on 29 November 1994, you were discharged from the Navy for misconduct with an 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 Wilkie Memo. These included, but were not limited to, your desire for a discharge upgrade and change to your reason for separation. You contend that: (a) you apologize to this Board and the Navy as a whole, and you understand that Sailors are held to a higher standard of personal conduct and that your actions fell below this standard, (b) you acknowledge that your behavior was shameful and immature, however, you could have had a promising career if your chain of command provided you with the appropriate alcohol abuse counseling and treatment, (c) where administrative punishment and confinement failed you, rehabilitation and treatment for your alcohol abuse issues may have produced a more favorable outcome, (d) the Navy failed to implement its own alcohol policy at the time in connection with your case by failing to process an alcohol assessment in a timely manner, (e) instead, your chain of command continued to reject your alcoholism diagnosis while then proceeding to document a long list of behaviors that included

explicit reference to alcohol abuse or behavior that was frequently and easily explained by alcohol abuse, (f) your chain of command was witnessing an active alcoholic while simultaneously withholding alcohol abuse treatment recommended by Navy physicians in stark contrast to the Navy's own alcohol abuse policies at the time, (g) you have been unjustly stigmatized and harmed by your OTH discharge, and (h) you have continued to strive for success despite your OTH discharge status, and you have worked exceptionally hard to overcome this stain on your life. For purposes of clemency and equity consideration, the Board considered the evidence you provided in support of your application.

After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. 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 generally warranted for misconduct and 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. The Board determined that the record clearly reflected your misconduct was intentional and willful and indicated you were unfit for further service. Moreover, the Board noted that the evidence of record did not demonstrate that you were not mentally responsible for your conduct or that you should not otherwise be held accountable for your actions.

The Board determined you were responsible for your behavior to ensure you conformed to acceptable standards of good order and discipline. The Board was not persuaded by your suggestion or inference that your alcohol-related misconduct was somehow the Navy's fault and/or could have been prevented, and that your command withheld rehabilitation treatment. The Board noted the record clearly reflects that in early October you were transferred off of the ship and sent to NNMC for treatment in conjunction with your administrative separation, which is standard procedure in cases such as yours. Ultimately, the Board found your statement of remorse to be unconvincing based your contentions that you were somehow not entirely responsible for your misconduct.

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 Wilkie Memo and reviewing the record 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,

8/21/2024

