



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. 6951-24
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.

Because your application was submitted with new contentions not previously considered, the Board found it in the interest of justice to review your application. Your current request has been carefully examined by a three-member panel, sitting in executive session on 6 January 2025. 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 August 2017 guidance from the Office of the Under Secretary of Defense for Personnel and Readiness (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) furnished by a qualified mental health professional, and your response to the AO.

You previously petitioned this Board for a discharge upgrade. On 17 April 2023, the Board granted partial relief by changing your narrative reason for separation from "alcohol rehabilitation failure" to "Secretarial Authority." The Board was not willing to grant you an upgrade to Honorable discharge, finding that the General (Under Honorable Conditions) already assigned to you remained appropriate.

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 to change your discharge characterization of service to HON and your contention that you were suffering from Crohn's Disease prior to separation, which caused severe pain and depressive disorder, and that to cope with the increased gastrointestinal pain and feelings of depression associated with the condition, you turned to drinking, which, coupled with your mental health condition, caused you to lose control. You further contend that despite your command knowing you suffered from Crohn's disease, which had an obvious impact on your mental health, you were never referred to mental health. Instead, you were referred to alcohol treatment, which inadequately addressed your depression. You contend you should have been referred to a medical board for Crohn's Disease well before you committed additional misconduct. For purposes of clemency and equity consideration, the Board considered the evidence you provided in support of your application, including your legal brief with enclosures.

As part of the Board's review process, a qualified mental health professional reviewed your contentions and the available records and issued an AO, dated 13 November 2024, which was previously provided to you. The AO noted in pertinent part:

There is no evidence that the Petitioner was diagnosed with a mental health condition during his military service, or that he exhibited any psychological symptoms or behavioral changes indicative of a mental health condition. He did exhibit behaviors and symptoms of alcohol abuse and/or dependence and was treated accordingly. The majority of his misconduct occurred prior to his diagnosis of Crohn's Disease. Thus, although it is reasonable that the Petitioner did experience depressive symptoms as a result of his Crohn's Disease, it cannot be said that all of his misconduct was caused by the diagnosis. It is more likely that his misconduct was a result of Alcohol Abuse/Dependence. It is possible that his Alcohol Abuse/Dependence was worsened by depression that was later caused by his Crohn's Disease diagnosis.

The AO concluded, "it is my clinical opinion that there is sufficient evidence of a mental health condition that may be attributed to military service. There is insufficient evidence to attribute all of his misconduct to a mental health condition."

In response to the AO, you provided supporting documentation that supplied additional clarification of the circumstances of your case. After reviewing your rebuttal evidence, the AO remained unchanged.

After thorough review, the Board concluded your 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 the fact it multiple alcohol offenses. The Board determined that alcohol misuse by a service member is contrary to military core values and policy, renders such members unfit for duty, and poses an unnecessary risk to the safety of their fellow service members. Additionally, the Board concurred with the AO and determined that although there is

evidence of a mental health condition that may be attributed to your military service, there is not enough evidence to attribute all of your misconduct to a mental health condition. Additionally, the Board opined, choosing to operate a vehicle while under the influence of alcohol, and allowing an underage Marine to drink in your presence, go beyond use of alcohol as a coping mechanism, as you contend. Finally, the Board determined you already received a large measure of clemency from this Board, and any injustice in your record was adequately addressed by this Board's prior grant of relief.

Regarding your contention that, despite your command knowing you suffered from Crohn's disease, you were never referred to mental health, the Board again agreed with the AO, finding that there is no evidence you were diagnosed with a mental health condition during service, or that you exhibited any psychological symptoms or behavioral changes indicative of a mental health condition. Rather, you exhibited behaviors and symptoms of alcohol abuse and/or dependence and were treated accordingly. The Board also found no error related to the lack of a medical board for Crohn's Disease and rather found that you were appropriately administratively processed for your repeated alcohol-related misconduct.

As a result, the Board concluded significant negative aspects of your service outweigh the positive aspects and continues to warrant a general 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 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,

3/6/2025

