



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

Docket No. 9211-24
Ref: Signature Date

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 26 February 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 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, 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). In addition, the Board considered an advisory opinion (AO) from a qualified mental health professional. Although you were provided an opportunity to respond to the AO, you chose not to do so.

The Board determined that your personal appearance, with or without counsel, would not materially add to their understanding of the issues involved. Therefore, the Board determined that a personal appearance was not necessary and considered your case based on the evidence of record.

You enlisted in the United States Navy and began a period of active duty on 2 August 1990. On 10 February 1992, you were admitted for medical evaluation based on your suicidal ideations.

Upon your discharge, you were diagnosed with a Personality Disorder, NOS, with Borderline and Narcissistic Features. On 24 February 1992, you received administrative remarks (Page 13) counseling concerning your diagnosis and warned that further deficiencies in your performance or conduct may result in administrative separation processing. On 25 April 1992, you were apprehended for public intoxication, drinking under the influence (DUI), and underage drinking. You eventually received a civil conviction for DUI and stopping on a highway. On 18 May 1992, you received a Page 13 retaining you in service after your civil conviction. On 20 November 1992, you received another Page 13 informing you that you were recommended for Level II treatment and a year of aftercare.

On 16 February 1993, you completed your Level II treatment, made minimal progress towards gaining insight into your condition, and were determined to have poor potential for an incident free future. Consequently, you were notified that you were being recommended for administrative discharge from the Navy by reason of alcohol abuse rehabilitation failure, misconduct due to commission of a serious offense, and misconduct civilian conviction. You waived your right to consult with counsel and to present your case to an administrative discharge board. The commanding officer forwarded your administrative separation package to the separation authority recommending your administrative discharge from the Navy with an Other Than Honorable (OTH) characterization of service. The separation authority accepted the recommendation and you were so discharged on 18 March 1993.

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 to upgrade your discharge character of service and contentions that: (1) you got married young, (2) you and your wife were in over your heads and moving too fast, (3) you started drinking to get away mentally from the situation you were in, (4) your second DUI was an automatic discharge and no help or options were given to you, (5) you had a promising start to your career and were advanced to E-3 out of bootcamp, and (6) you would like the Board to take into account your age and stressors in having a young child. For purposes of clemency and equity consideration, the Board considered the documentation you provided in support of your application.

Because you contend that other mental health impacted your misconduct, the Board considered the AO. The AO stated in pertinent part:

Petitioner was appropriately referred for psychological evaluation during his enlistment and properly evaluated, including during an inpatient hospitalization. His personality disorder and alcohol use disorder diagnoses were based on observed behaviors and performance during period of service, the information he chose to disclose, and the psychological evaluations performed by the mental health clinicians. Unfortunately, there is no evidence of another mental health condition in service, and he has provided no medical evidence to support his claims. His in-service misconduct appears to be consistent with his diagnosed personality and alcohol use disorders, rather than evidence of another mental health condition incurred in or exacerbated by military service. Additional records (e.g., mental

health records describing the Petitioner's diagnosis, symptoms, and their specific link to his misconduct) would aid in rendering an alternate opinion.

The AO concluded, "it is my clinical opinion there is insufficient evidence of a mental health condition that may be attributed to military service. There is insufficient evidence that his misconduct may be attributed to a mental health condition, other than personality or alcohol use disorder."

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 civilian conviction and alcohol rehabilitation failure, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and concluded your misconduct showed a complete disregard for military authority and regulations. The Board noted that you were provided opportunities to correct your conduct deficiencies during your service but you continued to commit additional misconduct; which led to your OTH discharge. Your conduct not only showed a pattern of misconduct but was sufficiently pervasive and serious to negatively affect the good order and discipline of your command. Additionally, the Board concurred with the AO that there is insufficient evidence that your misconduct may be attributed to a mental health condition, other than personality or alcohol use disorder. As explained in the AO, you provided no medical evidence in support of your contention.

As a result, the Board determined 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 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 your request does not merit relief. 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 determined that there was no impropriety or inequity in your discharge and concluded that your misconduct and disregard for good order and discipline clearly merited your discharge. 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,

3/21/2025

■

Executive Director

Signed by: ■