



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

██████████
Docket No. 10877-24
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 18 April 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 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. 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 3 November 2005. On 3 October 2006, you were subject to nonjudicial punishment (NJP) for violations of the Uniform Code of Military Justice (UCMJ), under Articles 86 and 134, for which you were also administratively counseled and warned that further misconduct could result in administrative separation. On 2 March 2007, you were subject to a second NJP for violations of the UCMJ to include Articles 86, 92, and 134, respectively, for three specifications of absence without leave, failure to obey a lawful order to return to your room, and disorderly conduct due to drunkenness. On 5 April 2007, you were convicted by Summary Court-Martial (SCM) for additional violations of the UCMJ under Articles 86 and 92. Consequently, you were notified of processing for administrative separation by reason of misconduct due to commission of a serious offense,

pattern of misconduct, and alcohol rehabilitation failure; although the details regarding your alcohol rehabilitation were not contained in your service records. You elected to voluntarily waive your right to consult counsel or to request a hearing before an administrative separation board. Ultimately, your discharge under Other Than Honorable (OTH) conditions was approved for the primary reason of misconduct due to commission of a serious offense. You were so discharged on 10 September 2007.

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. These included, but were not limited to, your desire to upgrade your discharge and contentions that you were young and naïve during your military service, took the blame for a friend who had been accused of attacking a female watch-stander, began self-medicating with alcohol due to anxiety and depression, and were unable to avoid alcohol-related incidents in spite of having received alcohol rehabilitation treatment. Post-discharge, you claim that you are currently in recovery, have been sober for a year, are employed, have sole custody of your child, are on a positive path, and believe you could improve further if your discharge were upgraded. In support of your contentions and for the purpose of clemency and equity consideration, you submitted a personal statement and evidence of your diagnoses, hospitalizations, and prescriptions.

Because you base your claim for relief primarily on your contention that you experienced a mental health condition which you believe may have mitigated the circumstances of your misconduct, the Board also 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 another mental health condition in military service. He has provided evidence of other mental health concerns that are temporally remote to his military service and appear unrelated. Unfortunately, it is difficult to attribute his misconduct to a mental health condition other than alcohol use disorder, given pre-service problematic alcohol use appears to have continued in service. Additional records (e.g., in-service or 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, "There is insufficient evidence [of] a mental health condition that may be attributed to military service. There is insufficient evidence to attribute his misconduct to a mental health condition, other than alcohol use disorder."

After thorough review, the Board concluded the potentially mitigating factors you submitted for consideration were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your NJPs and SCM, 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 you were given multiple opportunities to correct your conduct deficiencies but chose to continue to commit 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. Further, the Board concurred with the AO regarding the insufficient of mental health evidence in support of your contentions. As explained

in the AO, the medical evidence you provided is temporally remote to your military service and appears to be unrelated. Thus, it is difficult to attribute your misconduct to a mental health condition other than alcohol use disorder. 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 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,

5/5/2025

