



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: 1349-22
Ref: Signature Date



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 22 April 2022. 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) furnished by a qualified mental health provider which was previously provided to you. You were afforded an opportunity to submit a rebuttal to the AO, but did not.

The Board determined your personal appearance, with or without counsel, would not materially add to the 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 Marine Corps and began a period of active duty on 17 August 2009. From January through May of 2010, you suffered loss from the deaths of multiple family members and close friends; your attempts to work through your grief with peers and leaders were unsuccessful.

You began using illegal drugs to self-medicate, which resulted in a positive test from a command urinalysis. Your drug use included a volume of pills which was considered sufficient to meet the threshold for a distribution offense. During pre-trial confinement, you received substance abuse counseling and were referred for a psychological evaluation. You were diagnosed with post-traumatic stress disorder (PTSD), adjustment disorder with anxiety, and narcissistic personality disorder. You negotiated a pre-trial agreement providing for reduced confinement. You were tried before General Court-Martial (GCM), on 26 October 2010, during which you pled guilty to three specifications of violations of Article 112a for wrongful use of “Ecstasy” on four occasions and for wrongful distribution of the same. Your sentence included a Bad Conduct Discharge (BCD) and 19 months of confinement. Your pleas and sentence, to include your punitive discharge, were affirmed upon appellate review – the Navy and Marine Corps Court of Criminal Appeals issued a correction to the volume of pills in the distribution charge but found that correction was not material to your conviction or sentence. The U.S. Court of Appeals for the Armed Forces denied further appellate review and your punitive discharge was affected on 25 January 2012.

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. The Board carefully weighed all potentially mitigating factors to include, but not limited to, your desire to upgrade your discharge and your contentions that you were diagnosed with PTSD and anxiety during your military service which culminated with self-medicating drug use. You state that you took full responsibility for your actions, but also asserts that you had difficulty understanding decisions in your best interest because you had three different legal counsel which resulted in a lack of continuity. You feel that you might have negotiated a more positive outcome otherwise. The Board noted that you did not submit any advocacy letters for clemency purposes.

Because you contend a mental health condition either incurred in or aggravated by active military service contributed to your misconduct, the Board also considered the AO dated 9 March 2022. The AO stated in pertinent part:

In contrast, records submitted by Petitioner supported in-service diagnoses of (PTSD, Adjustment Disorder) and Narcissistic Personality Disorder features. Records further showed Petitioner explained his use of ecstasy as a way to “deal with feelings of loss.” Misuse of drugs/alcohol are common maladaptive ways to cope with mental health symptoms. Alternatively, distribution of drugs is not a behavior typically associated with a mental health condition and is likely associated with his Narcissistic Personality Disorder features.

The AO concluded, “Based on the available evidence, it is my considered clinical opinion there is sufficient evidence Petitioner exhibited behaviors associated with PTSD or other mental health condition during his military service and some of his misconduct may be mitigated by his PTSD or other mental health condition.”

The Board concurred with the AO regarding the limited mitigation of your mental health condition. Additionally, the Board noted the seriousness of your distribution offense. The Board observed, within your mental health records, that you expressed a focus on wanting to be released from confinement as soon as possible, even after negotiating for a lower period of

confinement. As a result, because you received the benefit of your chosen bargain, the Board found your contentions regarding representation by counsel unpersuasive and concluded the potentially mitigating factors you submitted were insufficient to outweigh your misconduct evidenced by your conviction by GCM. Based on this finding, the Board concluded your conduct constituted a significant departure from that expected of a Marine and continues to warrant a BCD. After applying liberal consideration, the Board did not find evidence of an error or injustice that warrants upgrading your characterization of service or granting clemency in the form of an upgraded characterization of service. Accordingly, the Board determined that your request does not warrant 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,

5/12/2022

[REDACTED]

Executive Director

[REDACTED]