



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

██████████
Docket No: 2146-22
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 15 July 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) of a qualified mental health provider and your response to the AO.

You enlisted in the Marine Corps with a history of pre-service marijuana use and began a period of active duty on 21 July 2003. You subsequently participated in Operation Iraqi Freedom. Following your post-deployment physical, on 28 August 2004, you requested mental health services due to combat stress, reporting symptoms of avoidance, watchfulness/guardedness, anhedonia, depression/hopelessness, and feelings of numbness and detachment after having engaged in direct combat and having observed enemy, civilian, and coalition casualties. In March of 2005, you fell out of a platoon run without permission and remained absent until being located in the room of a Marine from another unit. You subsequently refused to go on a unit

hike due to a feigned back injury. You subsequently completed a pre-deployment health survey, on 4 May 2005, which determined you to be deployable. Two days later, your routine urinalysis results were positive for cocaine metabolites and, on 11 May 2005, you were counseled for illegal drug use and notified of processing for administrative separation by reason of misconduct due to drug abuse. Because you agreed to waive your hearing before an administrative discharge board, you command disposed of your misconduct charges before Summary Court-Martial (SCM) at which you plead guilty to violations of Article 86 for failure to be at your appointed place of duty on 1 April 2005, Article 92 for failure to obey a lawful order on or about 6 April 2005, Article 12a due to wrongful use of cocaine (although the Record of Trial and your administrative separation records alternatively state marijuana), and Article 115 for communicating threats. Your separation physical was completed, on 20 July 2005, while you were serving confinement from your SCM, noting you had nervous issues since your Iraq deployment, had been counseled for combat stress, had used marijuana, and were being administratively separated; however, in forwarding the recommendation for your administrative separation under Other Than Honorable (OTH) conditions, your commanding officer expressly requested that your separation not be effected until after you completed your deployment commitment with the 31st Marine Expeditionary Unit in December of 2005. While deployed, you received nonjudicial punishment (NJP) for a violation of Article 92 due to violation of an order to refrain from purchasing alcohol while assigned to the deployed Liberty Risk Program. Although you were notified of your NJP rights on 29 August 2005, final action on your punishment was withheld until 15 November 2005. Subsequently, legal review of your separation proceedings was completed and, on 21 November 2005, Commander, 3d Marine Division approved your separation at the earliest practicable date. After returning from your deployment, you were discharged on 9 December 2005 with an OTH.

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 and your contentions that you struggled with post-traumatic stress disorder (PTSD) following your combat deployment, developed a substance use disorder, and did not receive proper treatment. For purposes of clemency consideration, the Board noted you did not provide supporting documentation describing post-service accomplishments, or advocacy letters.

Because you contend that PTSD affected your discharge, the Board also considered the AO. The AO stated in pertinent part:

Petitioner's OMPF did contain evidence of a diagnosis of a mental health condition (Combat Stress) for which he was counseled and prescribed medication after he returned from Iraq in 2004. His subsequent Pre-Deployment Health Assessment, in 2005, found Petitioner was fit for duty, indicating his symptoms did not interfere with his ability to perform his duties. Petitioner claimed his drug use was attributed to his symptoms of PTSD. It is reasonable to attribute Petitioner's use of marijuana to self-medication for reported nervousness (i.e., nervous, on guard), given marijuana's side effect of relaxation. In contrast, his use of cocaine is not the typical choice of self-medication for his reported symptoms. Cocaine is a stimulant and its use would result in increased heart rate

and many of the physical sensations typically feared by a person who suffers from Petitioner's reported symptoms. Furthermore, evidence submitted by Petitioner indicated misconduct of feigning a back injury was an effort to "to get out of a hike." Additional records (e.g., post-service mental health records describing the Petitioner's diagnosis, symptoms, and their specific self-medication role) would aid in rendering an alternate opinion.

The AO concluded, "[b]ased on the available evidence, it is my clinical opinion that there is evidence of a diagnosis of PTSD that may be attributed to military service. There is insufficient evidence that all of his misconduct could be attributed PTSD."

In response, you provided a rebuttal to the AO disagreeing with its reasoning that someone suffering from PTSD would only use a controlled substance for relaxation purposes. You argued that anecdotal evidence clearly demonstrates that service members suffering from PTSD often abuse multiple types of controlled substances with the purpose of escaping reality.

Based upon this review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your SCM and NJP, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the likely negative impact it had on the good order and discipline of your unit. In addition, the Board considered the fact your misconduct included a drug offense and you entered the Marine Corps with a history of drug abuse that pre-dated the trauma that formed the basis for your PTSD. Further, the Board found insufficient evidence that you suffered from a substance abuse disorder that would have benefited from rehabilitation treatment. In making this finding, the Board relied on your 22 June 2005 substance abuse rehabilitation screening in which you denied illicit drug use or an alcohol abuse problem. Finally, the Board concurred with the AO that premeditated actions such as feigning injuries to avoid routine physical activity are not typically mitigated by mental health conditions. Therefore, there is insufficient evidence all your misconduct could be attributed to PTSD. As a result, the Board concluded your conduct constituted a significant departure from that expected of a Marine and continues to warrant an OTH characterization. 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, 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, _____
7/26/2022

[REDACTED]

Executive Director
[REDACTED]