



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: 3353-22
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.

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 31 August 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 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, and 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) (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, which was previously provided to you. Although you were afforded an opportunity to submit an AO rebuttal, you chose not to do so.

You enlisted in the Navy and began a period of active duty on 27 May 1988. On 8 March 1989, you were diagnosed with drug abuse/dependence and antisocial personality traits. On 5 June 1989, you received non-judicial punishment (NJP) for two specifications of unauthorized absence, two specifications of wrongful possession of a controlled substance and wrongful use of a controlled substance. Subsequently, you were notified that you were being recommended for administrative discharge from the Navy by reason of misconduct due to drug abuse. You were advised of, and waived your procedural rights to consult with military counsel and to present your case to an administrative discharge board (ADB). Your commanding officer (CO) then

forwarded your administrative separation package to the separation authority (SA) recommending your administrative discharge from the Navy with an Other Than Honorable (OTH) characterization of service. Prior to the SA's decision, on 15 June 1989, you broke restriction and commenced a period of UA. On 18 July 1989, the SA approved the recommendation for administrative discharge and directed your OTH discharge from the Navy. On 8 August 1989, you were discharged in absentia from the Navy with an OTH characterization of service by reason of misconduct due to drug abuse.

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 contention that you struggled with mental health as an adolescent. You further contend that you had bad experiences while deployed, such as witnessing sexual abuse of your shipmates by supervisors, and because of this, it resulted in your fear of another deployment. For purposes of clemency consideration, the Board noted you provided your certification as a roofing contractor but no advocacy letter.

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 6 July 2022. The AO noted in pertinent part:

During military service, the Petitioner was diagnosed with a substance use disorder and personality disorder traits. These diagnoses were based on observed behaviors and performance during his period of service, the information he chose to disclose, and the psychological evaluation performed by the mental health clinician. There is no indication these diagnoses were incorrect and the evidence from his service record indicates that he was aware of his misconduct and responsible for his actions. Post service, he has provided a letter from his civilian provider that is temporally remote to his military service. Unfortunately, his report to his civilian provider is not consistent with his report during military service, which raises questions regarding the validity of the provider's provisional diagnosis, particularly given the Petitioner's pre-service history of substance use that continued in service. A provisional diagnosis indicates further assessment is required to verify the presence of the symptom criteria to assign the diagnosis. Additional records (e.g., post-service 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, "[b]ased on the available evidence, it is my considered clinical opinion there is insufficient evidence of diagnosis of post-traumatic stress disorder (PTSD) or another mental health condition that may be attributed to military service. There is insufficient evidence his misconduct could be attributed to PTSD or another mental health condition, other than his diagnosed substance use disorder."

Based upon this review, the Board concluded your potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as

evidenced by your NJP, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact it involved a drug offense. The Board determined that illegal drug use by a Sailor is contrary to Navy core values and policy, renders such Sailors unfit for duty, and poses an unnecessary risk to the safety of their fellow Sailors. The Board also considered the negative impact your conduct likely had on the good order and discipline of your command. Further, the Board noted that you committed additional misconduct while being processed for administrative separation. In the Board's opinion, this showed a complete disregard for military authority and regulations. Finally, the Board concurred with the AO and determined that there is insufficient evidence of diagnosis of PTSD or another mental health condition that may be attributed to military service, and there is insufficient evidence your misconduct could be attributed to PTSD or another mental health condition, other than your diagnosed substance use disorder. As a result, the Board determined your conduct constituted a significant departure from that expected of a Sailor and continues to warrant an OTH characterization. While the Board commends your certification as a roofing contractor, 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 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,

9/15/2022

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