



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: 3912-22
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 October 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 and your response to the AO.

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 Marine Corps Reserves, and began a period of active duty for training from 3 November 2003 through 8 April 2004. You received an Honorable characterization for the period of active duty service and subsequently continued your reserve enlistment. On 1 June 2004, you began a second period of active duty. On 31 May 2005, at the expiration of your

active duty service, you were discharged from the Marine Corps with an Honorable characterization of service and transferred to the Marine Corps Reserve. On 13 August 2005, you provided a urine sample for testing. The Navy Drug Laboratory, █ reported that your sample tested positive for cocaine. On 19 January 2006, because of your positive urinalysis, you were notified that you were being recommended for administrative discharge from the Marine Corps by reason of misconduct due to drug abuse. You were advised of your procedural rights to consult with military counsel and to present your case to an administrative discharge board (ADB) and waived those rights. The separation authority concurred with the staff judge advocate's determination that your administrative separation proceedings were sufficient in law and fact to support administrative discharge and directed your Other Than Honorable (OTH) discharge from the Marine Corps. On 27 July 2006, you were discharged from the Marine Corps with an OTH characterization of service by reason of misconduct due to drug abuse.

Post-discharge, you applied to the Naval Discharge Review Board (NDRB) for a discharge upgrade and change to your narrative reason for separation. The NDRB denied your request, on 28 February 2008, based on their determination that your discharge was proper as issued.

The Board carefully considered all potentially mitigating factors to determine whether the interests of justice warrant relief in your case in accordance with the Kurta, Hagel, and Wilkie Memos. These included, but were not limited to, your desire to upgrade your discharge character of service, change your separation code and reenlistment code. The Board also considered your assertion that you have been diagnosed with PTSD with persistent depressive disorder and moderate alcohol use disorder, with a combined disability rating of 70 percent. For purposes of clemency and equity consideration, the Board noted you did not provide supporting documentation describing post-service accomplishments or advocacy letters.

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 15 July 2022. The AO noted in pertinent part:

There is no evidence Petitioner was diagnosed with a mental health condition during his service. Unfortunately, Petitioner did not provide clarifying information about the trauma related to his PTSD (i.e., when the trauma occurred, symptoms experienced). The lack of clarifying information made available did not provide enough markers to establish an onset and development of mental health symptoms or identify a nexus with his misconduct. Additional records (e.g., VA Compensation and Pension Exam, 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, "it is my considered clinical opinion, there is insufficient evidence of PTSD that can be attributed to military service, or that his in-service misconduct could be attributed to PTSD."

In response to the AO, you provided a personal statement with additional information regarding the circumstances of your case and additional medical evidence. As a result, the AO conclusion was revised to “it is my considered clinical opinion that there is post-service evidence of a diagnosis of PTSD that may be attributed to military service. There is insufficient evidence his misconduct could be attributed to PTSD.”

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 discharge for misconduct due to drug abuse, 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 Marine is contrary to Marine Corps core values and policy, renders such Marine unfit for duty, and poses an unnecessary risk to the safety of their fellow Marines. Further, the Board considered the likely negative effect your misconduct had on the good order and discipline of your unit. Finally, the Board concurred with the AO and determined that there is insufficient evidence of PTSD that can be attributed to military service, or that your in-service misconduct could be attributed to PTSD. As a result, the Board determined your conduct constituted a significant departure from that expected of a Marine and continues to warrant an OTH characterization. While the Board empathized with your current medical condition, 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 upgrading your characterization of service, changing your narrative reason for separation, changing your separation code, or granting your requested relief as a matter of clemency or equity. 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,

11/8/2022

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Executive Director

Signed by: █