



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: 5169-22
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 10 November 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). As part of the Board's review, a qualified mental health professional reviewed your request and provided the Board with an Advisory Opinion (AO) on 6 September 2022. Although you were provided an opportunity to respond to the AO, you chose not to do so.

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.

During your enlistment processing you disclosed having been rejected for military service, minor traffic violations, and prior marijuana use. You enlisted in the U.S. Navy and began a period of

active duty on 15 July 2003. On 9 December 2004, you received nonjudicial punishment (NJP) for a period of unauthorized absence (UA) which lasted six days and for disrespect toward a commissioned officer. On 26 April 2005, during a psychological evaluation, you were diagnosed with personality disorder not otherwise specified with antisocial and paranoid features. This was followed with a recommendation for an expeditious administrative separation. On 22 June 2005, you were found guilty at a summary court-martial (SCM) of four specifications of UA totaling 6 days and two specifications of missing movement. You were sentenced to be confined for 30 days and to forfeit \$753.00 pay per month for one month.

On 29 June 2005, your urine tested positive for tetrahydrocannabinol (THC). Subsequently, you were offered and refused alcohol rehabilitation treatment. On 8 July 2005, you were notified of your pending administrative separation by reason of convenience of the government due to your personality disorder, commission of a serious offense (COSO), and drug abuse, at which time you waived your right to consult with counsel and to have your case heard before an administrative discharge board. On 20 July 2005, your Commanding Officer's recommended you be discharged with an Other Than Honorable (OTH) characterization of service. On 24 July 2005, the separation authority approved the recommendation directed you be discharged with an OTH for drug abuse. On 3 August 2005, you were so discharged.

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 and contention that you suffered from PTSD and depression during military service from childhood sexual abuse which caused you to experience concerns for your daughter's safety while in the Navy. You added that you felt unsupported by your command as you were experiencing personal stressors, including your daughter being placed in foster care and your brother being in a critical medical condition. For purposes of clemency and equity consideration, the Board noted you provided supporting documentation describing post-service accomplishments and advocacy letters.

Based on your assertion that you incurred PTSD and depression during military service, which might have mitigated the circumstances that led to your characterization of service, a qualified mental health professional reviewed your request for correction to your record and provided the Board with the AO. The AO stated in pertinent part:

Petitioner was appropriately referred for psychological evaluation during his enlistment and properly evaluated over close observation, including an inpatient psychiatric hospitalization. His diagnosis was based on observed behaviors and performance during his period of service, the information he chose to disclose, and the psychological evaluations performed by mental health clinicians a documented in his service records. He has provided no medical evidence to support his claims of another mental health condition. His in-service misconduct appears to be more consistent with his characterological traits, rather than evidence of a mental health condition incurred in or exacerbated by military service. Furthermore, it is difficult to consider how a mental health condition or his purported personal stressors would account for his repeated periods of UA.

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, "it is my considered clinical opinion there is insufficient evidence of a diagnosis of PTSD or another mental health condition that may be attributed to military service. There is insufficient evidence that his misconduct could be attributed to PTSD or another mental health condition, other than his diagnosed personality disorder."

After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your SPCM, NJP, and positive urinalysis, 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. Additionally, the Board noted your misconduct included 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 noted that marijuana use in any form is still against Department of Defense regulations and not permitted for recreational use while serving in the military. Finally, the Board concurred with the AO there is insufficient evidence that your misconduct could be attributed to PTSD or another mental health condition, other than your diagnosed personality disorder. As a result, the Board concluded your conduct constituted a significant departure from that expected of a Sailor and continues to warrant an OTH characterization. While the Board commends your post-discharge good character and accomplishments, 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 or granting an upgraded characterization of service as a matter of clemency or equity. 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 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,

11/30/2022

