



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: 5714-22

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 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 21 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 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, 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 dated 5 October 2022, which was previously provided to you. Although you were afforded an opportunity to submit an AO rebuttal, you chose not to do so.

Regarding your request for a personal appearance, the Board determined that a personal appearance with or without counsel will not materially add to their understanding of the issue(s) 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 Navy and began a period of active duty on 30 August 1977. On 12 June 1978, you received nonjudicial punishment (NJP) for transfer of a controlled substance. On

4 September 1980, you received a second NJP for dereliction of duty. On 24 August 1981, you were honorably discharged and transferred to the Naval Reserves. On 3 October 1982, you were honorably discharged from the Naval Reserves. On 4 October 1982, you enlisted in the Navy and began a period of active duty. After another period of honorable service, on 30 September 1986, you reenlisted for 5 years. On 6 October 1986, you received a third NJP for falsifying and official document. On the same date, you were counseled for such offense and advised that failure to take corrective action could result in administrative separation. From a period beginning on 24 October 1986 to 14 November 1986, you had two periods of unauthorized absence (UA) totaling 16 days and resulting in your apprehension by civil authorities. On 17 November 1986, you received a fourth NJP for a period of UA. On 28 January 1987, the previously suspended portion of your NJP sentence was vacated. On 29 January 1987, you received a fifth NJP for a period of UA and for being incapacitated for the performance of duties. On 26 February 1987, you received a sixth NJP for four instances of use of a controlled substance-marijuana, wrongful use of cocaine, possession of marijuana, and possession of cocaine. On 27 February 1987, you were notified of the initiation of administrative separation proceedings by reason of misconduct due to drug abuse, at which point, you decided to waive your procedural rights. On 12 March 1987, your commanding officer recommended and Other Than Honorable (OTH) discharge characterization of service by reason of misconduct due to drug abuse. On 19 March 1987, the separation authority approved and ordered an OTH discharge characterization by reason of misconduct due to drug abuse. On 25 March 1987, you were 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 for a discharge upgrade and contentions that you completed two periods of Honorable service, you were under tremendous amount of pressure during a Shellback initiation, that you suffered from PTSD as a result of your service, and that you were not offered rehabilitation treatment for drug and alcohol abuse. For purposes of clemency and equity consideration, the Board noted you did submitted character letters of recommendation in support of your application.

As part of the Board's review, the Board considered the AO. The AO stated in pertinent part:

Petitioner states that he has been diagnosed with Post Traumatic Stress Disorder (PTSD) and states that this PTSD could have caused the misconduct that resulted in an unfavorable discharge. He submitted four character references, and a personal statement. He has provided no medical evidence in support of his claims. In his personal statement he wrote about events that occurred during the Shellback Initiation which he believes resulted in PTSD. His record indicates that his ship crossed the equator in October of 1979. There is evidence in his record of misconduct and self-admitted drug abuse that occurred before the Shellback Ceremony. Additionally, given his admissions on his enlistment paperwork, it appears as though he engaged in civilian misconduct prior to enlistment. There is no evidence that he was diagnosed with any mental health condition other than substance abuse in military service, or that he exhibited any psychological symptoms or behavioral changes indicative of a mental health condition (PTSD).

Unfortunately the evidence submitted is not sufficient enough to provide a nexus between a mental health condition and his misconduct.

The AO concluded, “it is my considered clinical opinion there is insufficient evidence of a mental health condition (PTSD) that may be attributed to military service. There is insufficient evidence that his misconduct could be attributed to a mental health condition (PTSD).”

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 NJPs, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact it included drug offenses. 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. Additionally, the Board concurred with the AO that there is insufficient evidence that your misconduct could be attributed to a mental health condition. As pointed out in the AO, the Board considered that you entered the Navy with pre-service misconduct and your drug use occurred before the shellback initiation that you feel caused your PTSD. As a result, the Board concluded your conduct constituted a significant departure from that expected of a service member and continues to warrant an OTH characterization. While the Board commends your post-discharge good character, 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 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 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,

12/12/2022

