



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. 7598-22
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 limitations 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 6 March 2023. 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 service 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)/mental health condition (MHC) (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 an advisory opinion (AO) from a qualified mental health professional. Although you were afforded an opportunity to submit an AO rebuttal, 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.

You enlisted in the United States Marine Corps and commenced a period of service on 12 July 2000. Your enlistment application did not disclose pre-service drug use, however, you later disclosed pre-service use of both marijuana and cocaine beginning at the age of 15 during a medical evaluation.

On 10 August 2001, you received non-judicial punishment (NJP) for violation of Uniform Code of Military Justice (UCMJ) Article 112(a), for wrongful use of a controlled substance (cocaine). You did not appeal this NJP. On 17 August 2001, you were formally counseled regarding your drug use and notified that you were being processed for administrative separation and that you had the right to make a statement. You elected not to make a statement.

On 22 August 2001, your Commanding Officer notified you that you were being processed for an administrative discharge by reason of misconduct due to drug abuse. After consulting with qualified counsel, you elected your right to present your case at an administrative separation (ADSEP) board. On 26 October 2001, by a vote of three to zero, the ADSEP Board found that you committed the misconduct and recommended separation with an Other Than Honorable (OTH) characterization of service. Ultimately, on 23 January 2002, you were discharged from the Marine Corps for misconduct with an OTH characterization of service and assigned an RE-4 reenlistment code.

You previously applied to the Navy Discharge Review Board and were denied relief on 27 May 2014. You also applied to this Board and were denied relief on 18 April 2019.

The Board carefully considered all potentially mitigating and/or extenuating 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: (a) your desire to upgrade your characterization of service, (b) your contention that you were struggling with undiagnosed mental health issues due to various life stressors, and (c) the impact that your mental health had on your conduct during service. For purposes of clemency and equity consideration, the Board noted you did provide character letters in support of your request.

In your petition, you contend that you incurred Post Traumatic Stress Disorder (PTSD) and other mental health concerns due to your mother's illness and exacerbated by military service, which might have mitigated the circumstances surrounding your separation from service. As part of the Board review process, the BCNR Physician Advisor who is a licensed clinical psychologist (Ph.D.), reviewed your contentions and the available records and issued an AO dated 10 January 2023. The Ph.D. noted in pertinent part:

There is no evidence he was diagnosed with a mental health condition in military service. There is post-service evidence that a pre-service mental health condition (depression) worsened following his time in service. This post-service evidence indicated that the Petitioner engaged in maladaptive coping strategies (substance use) to address stressors associated with his mother's illness and death. It is difficult to attribute his in-service substance use to depression experienced during military service, given his pre-service substance use history and previous statement that his one-time in-service use was to cope with the same pre-service concerns regarding his mother. Substance use is incompatible with military readiness and discipline. During military service, he was aware of his misconduct and deemed responsible for his behavior.

The Ph.D. concluded, "it is my considered clinical opinion there is insufficient evidence of a diagnosis of PTSD. There is post-service evidence of a mental health condition (depression) that

a VA clinician has determined was exacerbated by military service. There is insufficient evidence his misconduct could be attributed to a mental health condition.”

After thorough review, the Board concluded the potentially mitigating factors were insufficient to warrant relief. In accordance with the Kurta, Hagel, and Wilkie Memos, the Board gave liberal and special consideration to your record of service and your contentions about the stressful events occurring your life and their possible adverse impact on your service. Specifically, the Board felt that your misconduct, as evidenced by your positive drug test, outweighed these mitigating factors. The Board considered the seriousness of your misconduct and the fact that it involved a drug offense. Further, the Board also considered the likely negative impact your conduct had on the good order and discipline of your command. The Board determined that illegal drug use is contrary to Marine Corps values and policy, renders such Marine unfit for duty, and poses an unnecessary risk to the safety of fellow service members. In making this determination, the Board concurred with the advisory opinion that there was no evidence that you suffered from any type of mental health condition while on active duty, or that any such mental health condition was related to or mitigated the misconduct that formed the basis of your discharge. The Board felt that you engaged in maladaptive coping strategies (substance use) to address stressors associated with your mother’s illness, from the time you were 15 years old, throughout your time in service, and after your discharge. The Board could not attribute your in-service substance use to military service, rather, the Board felt that your pre-service mental health condition (depression) and significant, long-term cocaine use would have prevented your enlistment in the service had you made the required disclosures at the time of your enlistment.

Based on these factors, the Board concluded that your misconduct was not due to service connected mental health-related symptoms. The Board found that your active duty misconduct was intentional and willful and demonstrated you were unfit for further service. The Board also determined that the evidence of record did not demonstrate that you were not mentally responsible for your conduct or that you should otherwise not be held accountable for your actions. 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.

The Board noted that there is no provision of federal law or in Navy/Marine Corps regulations that allows for a discharge to be automatically upgraded after a specified number of months or years. While the Board carefully considered the evidence you submitted in mitigation, 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 granting you the relief you requested or granting relief as a matter of clemency or equity. Ultimately, the Board concluded the mitigation evidence you provided was insufficient to outweigh the seriousness of your misconduct. 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,

3/9/2023

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Executive Director

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