



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. 9243-22
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 28 April 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 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)/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).

You enlisted in the Navy and commenced a period of active duty on 5 November 1985. On 25 November 1985, you submitted a written statement with your admission of cocaine use, and you requested to be retained in the Navy. On the same day, a dependency evaluation determined you were not psychologically, nor physiologically dependent on cocaine. As a result, you were notified of the initiation of administrative separation proceedings by reason of misconduct due to drug abuse, at which point, you elected your right to consult with counsel, and a hearing of your case before an administrative discharge board (ADB). On 27 February 1986, an ADB convened and determined you committed misconduct as evidence of your drug abuse; however, you were recommended for retention in naval service. Your commanding officer concurred with the ADB's recommendation. Subsequently, you were retained on active duty. You were counseled regarding

your retention in naval service on 14 April 1986, and warned further misconduct would result in the initiation of administrative separation proceedings.

On 15 January 1987, you were convicted at a special court martial (SPCM) for resisting apprehension, operating a vehicle while drunk, and four specifications of assault to a person in the execution of military law enforcement.

On 4 December 1987, you were counseled regarding your breach of peace and damage of government property. Subsequently, you received non-judicial punishment (NJP), on 16 December 1987, for wrongful use of cocaine. On 21 December 1987, you were notified of the initiation of administrative separation proceedings by reason of misconduct due to drug abuse. After you waived your right to consult with counsel and a hearing before an ADB, the discharge authority approved and directed your separation with an Other Than Honorable (OTH) character of service by reason of misconduct due to drug abuse. On 16 March 1988, 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 contentions that you battled substance abuse in the beginning of your enlistment, you did not receive proper treatment, and since your discharge you have been sober and a productive member of society. For purposes of clemency and equity consideration, the Board noted you did not provide documentation describing post-service accomplishments or advocacy letters.

Based on your assertion that you were suffering from a mental health condition during military service, which might have mitigated the circumstances of your discharge, the Board requested and reviewed an AO provided by a mental health professional. The AO stated in pertinent part:

Petitioner was appropriately referred for psychological evaluation and properly evaluated during his enlistment. His alcohol and substance use 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. Substance use and problematic alcohol use is incompatible with military readiness and discipline and does not remove responsibility for behavior. The Petitioner has provided no evidence of another mental health condition that may be attributed to military service. It is difficult to attribute his alcohol and substance use to military service, given pre-service behavior that appears to have continued in service. Additional records (e.g., post-service mental health records describing the Petitioner's diagnosis, symptoms, and their specific link to his military service) may aid in rendering an alternate opinion.

The AO concluded, "it is my clinical opinion there is insufficient evidence of a mental health condition that may be attributed to military service. There is insufficient evidence to attribute the circumstances of his separation to a mental health condition, other than alcohol use disorder."

After thorough review, the Board concluded your potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your SPCM and NJP, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact it included a drug offense. The

Board determined that illegal drug use by a service member is contrary to military core values and policy, renders such members unfit for duty, and poses an unnecessary risk to the safety of their fellow service members. Further, the Board considered that you were retained in the Navy after your first drug offense and chose to continue your drug abuse. Additionally, the Board concurred with the AO that there is insufficient evidence to attribute the circumstances of your separation to a mental health condition, other than alcohol use disorder. Finally, the Board noted that you provided no evidence to substantiate your contentions. 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. Even in light of the Wilkie Memo and reviewing the record liberally and 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. 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,

5/18/2023

