



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. 9318-22
Ref: Signature Date

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Dear █

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 17 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 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 provide a response 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.

You enlisted in the United States Navy and commenced a period of service on 17 December 2002. On your enlistment application, you acknowledged pre-service marijuana use.

In April 2005, you received a medical evaluation wherein you report “recent suicidal thoughts and gestures, and long-term depression symptoms” and the physician diagnosed you with Dysthymia. You also submitted additional follow-up mental health records, from May to August 2005, which listed diagnoses of Dysthymia and Personality Disorder Not Otherwise Specified (NOS), both existing prior to enlistment (EPTE).

On 1 August 2005, as documented by a Page 13 Administrative Counseling, your security clearance was revoked due to “NJP UCMJ Article 112(a).”

Unfortunately, the documents pertinent to your administrative separation are not in your official military personnel file (OMPF). Notwithstanding, the Board relies on a presumption of regularity to support the official actions of public officers and, in the absence of substantial evidence to the contrary, will presume that they have properly discharged their official duties. Your Certificate of Release or Discharge from Active Duty (DD Form 214), reveals that you were separated from the Marine Corps on 8 August 2005 with an Other Than Honorable (OTH) characterization of service, your narrative reason for separation is “Misconduct,” your separation code is “HKK,” and your reenlistment code is “RE-4.” Your assigned separation code corresponds with a separation due to drug abuse.

On 30 June 2021, your case was reviewed by the Navy Discharge Review Board (NDRB) and you were granted a discharge characterization upgrade from OTH to General (Under Honorable Conditions).

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, (b) your contention that you were struggling with undiagnosed mental health issues, and (c) the impact that your mental health had on your conduct during service. For purposes of clemency consideration, the Board noted you provided documentation related to your post-service accomplishments and character letters.

In your request for relief, you contend that you incurred PTSD and other mental health concerns due to poor command climate and witnessing a severe injury during a training exercise. You claim that your frustration resulted in increased alcohol use, a suicide attempt, and ultimately the use of marijuana as “a more suitable alternative to rid himself of his command.” 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 8 March 2023. The Ph.D. noted in pertinent part:

Petitioner was appropriately referred for psychological evaluation and properly evaluated during his enlistment. His mental health diagnoses were 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. Although both mental health diagnoses were noted to be pre-enlistment conditions, it is reasonable that they may have worsened after stressful experiences and may have contributed to the circumstances of his separation.

There is no evidence of a diagnosis of PTSD. 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 Ph.D. concluded, "it is my clinical opinion there is insufficient evidence of a diagnosis of PTSD. There is in-service evidence of other mental health conditions that may have worsened during military service. There is evidence to attribute some of the circumstances of his separation to his mental health conditions."

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 mental health and the possible adverse impact your mental health had on your conduct during service. Specifically, the Board felt that your misconduct, as evidenced by your NJP and revocation of your security clearance, 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 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.

In making this determination, the Board concurred with the advisory opinion that there is no evidence of a diagnosis of PTSD, but that there is evidence of other mental health conditions. While these mental health diagnoses were noted to be pre-enlistment conditions, the Board felt that it is reasonable that these conditions may have worsened after stressful experiences and may have contributed to the circumstances of your separation. However, the Board also noted that the NDRB already reviewed your case and granted a level of relief. NDRB found that your in-service trauma contributed to the deterioration of your mental health, therefore, considered your mental health as a mitigating factor to your misconduct, and upgraded your OTH to a GEN. The Board concurred with the assessment made by NDRB that while your mental health conditions should be a mitigating factor in determining the correct characterization of separation, your conditions did not rise to a level that completely absolves you of all misconduct. Therefore, notwithstanding the finding that your misconduct was influenced, to some degree, by your mental health condition, the Board was not willing to grant an upgrade to an Honorable discharge. The Board determined that an Honorable discharge was appropriate only if the member's service was otherwise so meritorious that any other characterization of service would be clearly inappropriate. The Board concluded by opining that certain negative aspects of your conduct and/or performance outweighed the positive aspects of your military record, even under the liberal consideration standards for mental health conditions, and that a GEN discharge characterization and no higher was appropriate. Therefore, while the Board carefully considered the evidence you provided 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 grant another upgrade

to your characterization of service. 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,

4/21/2023

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Deputy Director

Signed by: █