

## **DEPARTMENT OF THE NAVY**

BOARD FOR CORRECTION OF NAVAL RECORDS 701 S. COURTHOUSE ROAD, SUITE 1001 ARLINGTON, VA 22204-2490

> Docket No. 9366-22 Ref: Signature Date

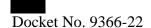
## Dear Petitioner:

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 Board waived the statute of limitation 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 5 May 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 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, and applicable statutes, regulations, and policies, to include to 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) of a qualified mental health provider, which was previously provided to you. Although you were afforded an opportunity to submit a rebuttal, you chose not to do so.

You enlisted in the Navy, noting pre-service marijuana use during your entrance screening, and began a period of active duty on 3 February 1984. You completed your first period of service honorably and reenlisted on 28 January 1988. You absented yourself without authority from 17 February 1988 through 28 February 1988, returning by voluntary surrender with no apparent disciplinary action.

Subsequently, you reported to for duty aboard the on 30 April 1988, and self-referred to Drug and Alcohol Prevention Awareness (DAPA) for drug abuse screening after reportedly smoking marijuana laced with cocaine on 28 September 1988. The DAPA referred you for medical screening which found you not to be drug dependent. However,



by 9 March 1989, your medical record indicates that the Counseling and Assistance Center had screened you and recommended level III rehabilitation treatment for cocaine dependence. Shortly thereafter, you were convicted by civilian authorities for driving without a license, driving under a suspended license, and speeding.

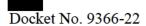
You commenced treatment for drug addiction on 27 March 1989. After completing treatment, you continued to serve until 15 September 1989, when you were subject to nonjudicial punishment (NJP) for wrongful use of cocaine. Although you were counseled at the time of your NJP, regarding being a drug abuser and rehabilitation failure, your entire punishment was suspended. You were subsequently counseled again, on 30 November 1989, regarding your retention in the Navy provided that you successfully participated in command level I intervention program for one year, without further illegal drug use. You continued to serve for the duration of that one year period without further incident; however, on 7 January 1991, a drug lab message identified your urine sample as positive again for cocaine metabolites.

As a result, you were notified, on 23 January 1991, of processing for administrative separation for misconduct due to drug abuse and elected to waive your rights to consultation with counsel and a hearing before an administrative separation board. Commander, Navy Personnel Command, approved the recommendation for your discharge under Other Than Honorable (OTH) conditions but required that you be offered the opportunity for in-patient treatment at a Department of Veteran's Affairs hospital prior to your discharge, which you accepted. You were hospitalized for rehabilitation treatment in March 1991 and discharged, on 30 April 1991, with an OTH.

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 to "Honorable" and your contentions that your life was repeatedly threatened while you waited to testify in court-martial against four shipmates, you were transferred from your command and placed into "protective custody" until the trial, and required your reassignment after the trial. You also contend that you feared you would encounter someone from your previous command at your new duty station, began having nightmares, and you felt constant fear that your life was in danger. You claim caused auditory and visual hallucinations resulted in your return to using drugs to self-medicate and "dull the pain." You also state that, post-discharge, you have been treated for post-traumatic stress disorder (PTSD) and drug addiction. For purposes of clemency and equity consideration, the Board noted you did not provide documentation describing post-service accomplishments or advocacy letters.

Because you contend that a mental health condition affected the circumstances of your discharge, the Board also considered the AO. The AO stated in pertinent part:

During military service, the Petitioner was diagnosed with alcohol and substance use disorders. Substance use and problematic alcohol use are incompatible with military readiness and discipline and do not remove responsibility for behavior. There is no evidence that he was diagnosed with another mental health condition in military service. He has provided no medical evidence in support of his claims. Unfortunately, available records are not sufficiently detailed to establish clinical symptoms in service or provide a nexus with his misconduct. Additional records



(e.g., post-service mental health records describing the Petitioner's diagnosis, symptoms, and their specific link to his misconduct) may aid in rendering an alternate opinion.

The AO concluded, "it is my 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 to attribute his misconduct to PTSD or another mental health condition, other than his diagnosed alcohol and substance use disorders."

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 NJP and multiple incidents of drug abuse, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the likely negative effect your misconduct had on the good order and discipline of the 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. Further, the Board concurred with the AO that there is insufficient evidence to attribute your misconduct to PTSD or another mental health condition, other than your diagnosed alcohol and substance use disorders. The Board noted that there was a lack of substantiating medical evidence of your contended diagnosis of PTSD. With respect to your additional contentions regarding post-discharge substance abuse rehabilitation, the Board also noted that you did not submit any evidence to substantiate your contentions. Finally, although the Board distinctly observed that your repeated transfers to and from the potentially consistent with your contentions regarding your participation as a witness for courtmartial, the Board found that it lacked sufficient information 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 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 is attached 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.

