



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. 9488-22
Ref: Signature Date

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Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to 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 acknowledging pre-service history of an arrest for possession of marijuana, and you began a period of active duty on 10 Jul 1997. After your first year of service, on 17 June 1998, you were subject to nonjudicial punishment (NJP) for an unauthorized absence and failure to obey a lawful order. You were subject to two additional NJPs on 28 January 1999 and 17 February 1999, both for wrongful use of the controlled substance marijuana. You additionally were convicted by Summary Court-Martial (SCM) for another drug abuse offense, communicating a threat, disrespect toward a petty officer, failure to obey a lawful general order by possessing alcoholic beverages aboard a vessel, and for dereliction of duty by failing to stay awake during working hours. Following your period of confinement, you were notified of

processing for administrative separation by reason of misconduct due to commission of a serious offense and for drug abuse, and you elected to waive your right to consultation with legal counsel or a hearing before an administrative board. You received a medical examination incident to your separation physical, on 18 May 1999, during which you indicated that you were in good health; these records document that you had no significant medical history of note. You were recommended for your separation under Other Than Honorable (OTH) conditions and so discharged on 16 August 1999 for drug abuse.

You previously requested review of your discharge by the Naval Discharge Review Board (NDRB) wherein you contended that your post-service conduct merited consideration of an upgraded discharge on the basis of clemency factors. On 17 November 2011, the NDRB denied your request after concluding your discharge was proper as issued.

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 you suffer from the mental disability of bipolar disorder, paranoid schizophrenia, and post-traumatic stress disorder (PTSD). Your family, who have assisted with submission of your application, appear to have applied for appointment of a guardian for you in reference to your primary diagnosis of bipolar disorder following an acute psychotic episode in May of 2020. With their assistance, you request a grant of clemency based upon their belief that you do not have the ability to discern, without medication to ensure your mental stability, whether your behavior is proper. Medication which you were not taking during your military service over 20 years ago. For the purpose of clemency and equity consideration, the Board considered the evidence you submitted in support of your application.

Because you contend that PTSD and/or other mental health conditions such as bipolar disorder may have affected your conduct and behavior which resulted in your discharge, the Board also considered the AO. The AO stated in pertinent part:

When evaluated in service, the Petitioner denied problematic alcohol or substance use behavior. There is no evidence that he was diagnosed with a mental health condition in military service, or that he exhibited any psychological symptoms or behavioral changes indicative of a diagnosable mental health condition. Post-service, he has received mental health diagnoses that are temporally remote to military service and appear unrelated. Unfortunately, available records are not sufficiently detailed to establish clinical symptoms in service or provide a nexus with his misconduct, particularly 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 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."

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 and SCM, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and found that your conduct showed a complete disregard for military authority and regulations. Additionally, 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. The Board noted that marijuana use in any form is still against Department of Defense regulations and not permitted for recreational use while serving in the military. Further, the Board concurred with the AO that there is insufficient evidence to attribute your misconduct to PTSD or another mental health condition. The Board noted that your current contentions appear to be tied exclusively to your recent diagnosis which are temporally remote from your military service to be probative on the issue of nexus to your misconduct. 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 was sympathetic to your current medical situation and carefully considered the evidence you submitted in mitigation, 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. 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 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.

Sincerely,

5/17/2023

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Deputy Director

Signed by: █