



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: 1978-23
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 statute of limitation was waived in accordance with the 25 August 2017 guidance from the Office of the Under Secretary of Defense for Personnel Readiness (Kurta Memo). A three-member panel of the Board, sitting in executive session, considered your application on 23 October 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 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). As part of the Board's review, a qualified mental health professional reviewed your request and provided the Board with an Advisory Opinion (AO) on 5 September 2023. Although you were afforded an opportunity to submit a 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 U.S. Marine Corps and began a period of active service on 23 June 1987. On 14 July 1988, you were counseled regarding your failure to adequately maintain funds in your

checking account resulting in your financial irresponsibility and you chose not to submit a statement in rebuttal. On 12 September 1988, you received nonjudicial punishment (NJP) for assaulting a fellow Marine, disorderly conduct, and riot/breach of peace. On 24 May 1989, you were found guilty at a special court-martial (SPCM) of wrongfully using cocaine and were sentenced to be confined for 90 days, to forfeit \$400.00 pay per month for three months, and to be reduced in rank to E-1. On 15 September 1989, you were issued administrative remarks documenting your frequent use of narcotics yet retaining you in the Navy and advising you that further disciplinary infractions or continuation of deficient performance may result in disciplinary action and/or in processing for administrative discharge. On 29 November 1989, you were found guilty at a second SPCM of two specifications of wrongfully using marijuana and were sentenced to receive a bad conduct discharge (BCD), to be confined for three months, and to forfeit \$466.00 pay per month for three months. On 4 March 1991, your sentence was affirmed and on 10 August 1992, you were discharged with a BCD as a result of your SPCM.

The Board carefully considered all potentially mitigating factors to determine whether the interests of justice warrant relief in your case in accordance with the Wilkie Memo. These included, but were not limited to, your desire to upgrade your characterization of service and your contentions that, (1) you incurred mental health concerns (PTSD) from incidents which occurred prior to your enlistment and you should have received an intervention or some other offer or type of help since your discharge was based on drug use, (2) there were other Marines that were doing the same thing and they received help but you were not given the same option, and (3) you were given a BCD. The Board viewed your allegations with serious concern. However, this Board is not an investigating agency nor does it have the resources to investigate unsubstantiated allegations. For purpose of clemency and equity consideration, the Board noted you provided a personal statement.

Based on your assertions that you incurred other mental health concerns (PTSD) during military service, which might have mitigated the circumstances of your separation, a qualified mental health professional reviewed your request for correction to your record and provided the Board with an AO. The AO stated in pertinent part:

There is no evidence that the Petitioner was diagnosed with a mental health condition or that he exhibited any psychological symptoms or behavioral changes indicative of a diagnosable mental health condition. Unfortunately, his personal statement is not sufficiently detailed to establish clinical symptoms or provide a nexus with his misconduct. Furthermore, there is no evidence that the Petitioner verbalized suffering from any trauma symptoms as a result of pre-service experiences, nor did he offer this as an explanation for any of his misconduct during any of his proceedings. Additional records (e.g., post-service mental health records describing the Petitioner's diagnosis, symptoms, and their specific link to his misconduct) would aid in rendering an alternate opinion.

The AO conclude, "based on the available evidence, it is my considered clinical opinion there is insufficient evidence of a mental health condition that may be attributed to military service. There is insufficient evidence that his misconduct could be attributed to a 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 NJP and two SPCMs, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact that it included drug offenses. 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. Additionally, the Board agreed with the AO that there is insufficient evidence of a mental health condition that may be attributed to your military service or your misconduct. As a result, the Board concluded your conduct constituted a significant departure of that expected of a service member and continues to warrant a BCD. While the Board carefully considered the evidence you submitted in mitigation, even in light of the Kurta, Hagel, and Wilkie Memos 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 mitigating evidence you provided was insufficient to outweigh the seriousness of your misconduct. Accordingly, given the totality of the circumstances, the Board determined 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,

10/30/2023

