



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. 2007-23

Ref: Signature Date

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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 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 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 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 and your response to the AO.

You enlisted in the United States Navy and commenced a period of service on 18 August 1987. On 8 June 1988, you received non-judicial punishment (NJP) for violation of Uniform Code of Military Justice Article 112(a), for wrongful use of a controlled substance (cocaine). During your medical examination, on 15 June 1988, you denied any mental health concerns or symptoms. On 16 June 1988, you were notified that you were being processed for an administrative discharge by reason of misconduct - drug abuse. You waived your right to consult with qualified counsel and your right to present your case at an ADSEP board. During a second medical evaluation, on 24 June 1988, you were deemed not drug or alcohol dependent. The treating physician noted that you "[a]dmits to cocaine use once. Bought stuff himself and used it by himself. CAAC eval done. Recommend NADSAP prior to separation but not delaying separation. If not done prior to

separation, can go to local drug rehab program.” On 6 July 1988, you were discharged from the Navy with an Other Than Honorable (OTH) characterization of service due to your misconduct and assigned an RE- 4 reentry code.

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 of service, (b) your assertion that this was a one-time mistake driven by your desire to separate from the service, (c) your contention that you were suffering from undiagnosed mental health issues during service, and (d) the impact that your mental health had on your conduct. For purposes of clemency and equity consideration, the Board noted that you provided documentation related to your post-service accomplishments and character letters.

In your request for relief, you contend that you incurred mental health concerns during your youth, which were exacerbated during your service and ultimately contributed to your misconduct. You assert that you were looking for a way out of the service and purposefully took drugs (cocaine) prior to a urinalysis test to get kicked out. You claim that you have never used drugs before or since, and that this reflected a single-time, youthful mistake. In support of your request, you provide evidence of post-service medical treatment. 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 5 September 2023. The Ph.D. noted in pertinent part:

The Petitioner submitted disability paperwork from █ Health and Human Services dated April 2021. He submitted lab work from █ Health System taken in June 2021. He submitted summaries from two hospitalizations at █ in June 2021 and September 2022. The first hospitalization appears to have been due to an overdose on Trazadone, and the second because as the Petitioner stated, “My depression built up and I wanted to hurt people.” He was diagnosed with Major Depressive Disorder, Recurrent, Severe, PTSD, and Insomnia Disorder after both hospitalizations. He submitted records from ENT and Endocrinology as well as another hospitalization in March 2023 following an episode of syncope.

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 while in service. He submitted several character references primarily from family members as well as medical records that are temporally remote to service and do not specify the etiology or surmised cause of his psychiatric diagnoses noted. Unfortunately, his personal statement is not sufficiently detailed to establish clinical symptoms 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) would aid in rendering an alternate opinion.

The Ph.D. concluded, “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.”

The Ph.D. reviewed your rebuttal statement dated 25 September 2023, wherein your mother describes the change in your character during that timeframe and provides a post-service conviction as evidence of your uncharacteristic behavior. No additional medical evidence was submitted, and after a review of your rebuttal evidence, the original AO remained unchanged.

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 undiagnosed mental health issues and the possible adverse impact on your service. Specifically, the Board felt that your misconduct, as evidenced by your NJP, 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 substance abuse is contrary to the Navy core values and policy, renders such Sailor unfit for duty, and poses an unnecessary risk to the safety of fellow shipmates.

In making this determination, the Board concurred with the advisory opinion that there was no convincing evidence that you suffered from any type of mental health condition while on active duty, or that any such mental health condition was related to or mitigated the misconduct that formed the basis of your discharge. Your post-service medical documents are temporally remote to your service and fail to draw sufficient nexus to the underlying misconduct. As a result, the Board concluded that your misconduct was not due to mental health-related symptoms. The Board determined the record clearly reflected that your active duty misconduct was intentional and willful and demonstrated you were unfit for further service. The Board also determined that the evidence of record did not demonstrate that you were not mentally responsible for your conduct or that you should otherwise not be held accountable for your actions. The Board concluded that your misconduct constituted a significant departure from that expected of a Sailor and continues to warrant an OTH characterization.

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 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 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,

10/27/2023

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