



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

█
Docket No. 2256-23
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 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 13 November 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. 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 the understanding of the issues involved. Therefore, the Board determined a personal appearance was not necessary and considered your case based on evidence of record.

You enlisted in the Marine Corps, after receiving a waiver for pre-service drug use, and began a period of active duty on 6 May 2003. You deployed to █ in support of contingency operations, where you earned a Combat Action Ribbon (CAR). You reported to your battalion aid station on 8 February 2005 with a complaint of hearing loss after having been exposed to the blast from an improvised explosive device (IED). The following month, your command received a report that your sample from a drug screening urinalysis had tested positive for cocaine

metabolites. You declined substance abuse screening and accepted trial before Summary Court-Martial (SCM), on 6 June 2005, for violations of the Uniform Code of Military Justice (UCMJ) under Article 112a, for your wrongful use of cocaine, and Article 86, for two specifications of unauthorized absences (UAs) on 19 April 2005 and 13 May 2005. You were then notified of processing for administrative separation by reason of misconduct due to drug abuse and elected to waive your right to a hearing before an administrative separation board. The recommendation for your discharge under Other Than Honorable conditions was approved, and you were so discharged on 26 September 2005.

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 discharge and your contentions that you incurred a traumatic brain injury (TBI) with loss of consciousness from an IED during a combat patrol in ██████████. You assert that the nonstop firefights were unbearable, your mental health condition since your combat service has affected your life, and you would like to be able to receive services through the Department of Veterans Affairs (VA). For purposes of clemency and equity consideration, you submitted a service health record documenting your complaint of hearing loss due to the IED blast and self-diagnostic documents of symptoms you believe you have observed.

Because you contend that post-traumatic stress disorder (PTSD), TBI, and/or another mental health condition affected the circumstances of your discharge, the Board also considered the AO. The AO stated in pertinent part:

The Petitioner submitted a medical record from February 2005 when he presented to the Battalion Aid Station in theatre complaining of hearing loss following an IED blast. He also submitted definitions of PTSD, a “Feelings Wheel,” and information on VA PTSD apps. There is no evidence that the Petitioner was diagnosed with a mental health condition or suffered from PTSD while in military service, or that he exhibited any psychological symptoms or behavioral changes indicative of a diagnosable mental health condition. He did not submit any medical evidence in support of his claim. 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 AO 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.”

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, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact it included a drug offense. 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 regarding the lack of objective evidence

supporting your contended mental health conditions and also observed a lack of clarifying information in your personal statement regarding the potential nexus between your contended combat trauma and your illegal drug use and UA periods. Finally, absent a material error or injustice, the Board declined to summarily upgrade a discharge solely for the purpose of facilitating veterans' benefits, or enhancing educational or employment opportunities. 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 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 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,

11/29/2023

