



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. 2404-23
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.

Because your application was submitted with new evidence not previously considered, the Board found it in the interest of justice to review your application. A three-member panel of the Board, sitting in executive session, considered your application on 1 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 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 25 August 2017 guidance from the Office of the Under Secretary of Defense for Personnel and Readiness (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). In addition, the Board considered the advisory opinion (AO), from a qualified mental health profession, that was drafted as part of your previous application to this Board.

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 previously submitted a petition to this Board and were denied relief on 11 July 2019.

You enlisted in the United States Navy and commenced a period of active duty on 6 February 1986. On your enlistment application you acknowledged pre-service conviction for drug offense (marijuana) and for two alcohol related offenses (driving while intoxicated).

From 12 November 1986 to 24 December 1986, you received inpatient substance abuse treatment, during which time you were diagnosed with “alcohol dependence (in remission) and borderline personality disorder, chronic, severe.” You were ordered to a mandated 180 day aftercare period. During your period of treatment, you disclosed significant pre-service substance abuse treatment. Specifically, you were treated at █ Rehabilitation Center from April 1985 until July 1985, and subsequently referred to █ Mental Health Foundation for long term treatment for depression. You remained there from July 1985 until August 1985. You returned to █ from August 1985 to October 1985 for continued treatment of depression. Thereafter, you went to a halfway house that was Narcotics Anonymous oriented and remained there from October 1985 until you enlisted in the Navy.

On 30 April 1987, you were found guilty at Summary Court Martial (SCM) of violating Uniform Code of Military Justice (UCMJ) Article 86, for three periods of unauthorized absence (UA) totaling 31 days. You were awarded 30 days confinement and forfeitures of pay. On 29 May 1987, you received non-judicial punishment (NJP) for violating UCMJ Article 112(a), for wrongful use of a controlled substance (cocaine). You did not appeal your NJP.

On 16 June 1987, you were notified that you were being processed for an administrative discharge by reason of misconduct due to commission of a serious offense and drug abuse. You waived your right to consult with qualified counsel and your right to present your case at an administrative separation board. Prior to your discharge, in accordance with OPNAV 5350-2, you were screened for drug and alcohol dependence and subsequently “diagnosed by competent medical authority as dependent on alcohol and poly drugs.” On 24 July 1987, you were discharged from the Navy for “Misconduct Abuse of Drugs/Alcohol” with an Other Than Honorable (OTH) characterization of service and assigned an RE- 4 reenlistment code.

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: (1) your desire to upgrade your discharge characterization, (2) your argument that alcoholism is a disease and illness, per the APA and AMA, and is a protected class under Title 7, and (3) your assertion that you tried to stay sober but that the military service environment was not supportive or conducive to sobriety. For purposes of clemency and equity consideration, the Board noted that you provided documentation of your post-service accomplishments, to include education and certification in the field of counseling and substance abuse, as well as your position as the executive director of the Addiction Education Foundation.

Based on your contention that you suffered from a mental health condition, that was related to your request for relief, the Board considered the AO issued from your previous application to the Board. The AO stated in pertinent part:

The Petitioner's mental health condition of alcohol dependence can not be attributed to military service. He had significant alcohol treatment as well as involvement with civilian authorities for alcohol misuse prior to entering the Navy, so his addiction did not develop as a consequence of military service. Unfortunately, the Petitioner has provided no post-service treatment records, making it difficult to render an opinion on the Petitioner's misconduct. However, his wrongful use of

cocaine after receiving military treatment of substance use disorder indicates that he was a treatment failure for substance abuse rehabilitation and separation was an appropriate recommendation. In the absence of post-service treatment records, there is insufficient evidence to attribute the Petitioner's UA to a mental health condition.

The AO concluded, "it is my considered medical opinion that there is insufficient evidence to attribute the Petitioner's misconduct to his mental health condition."

After thorough review, the Board concluded your potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your SCM and NJP, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact that it involved a drug offense and continual substance abuse throughout your time in service. 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 drug use 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. The Board also concurred with the AO that there is insufficient evidence to attribute your misconduct to your mental health condition. The Board highlighted that you had significant substance abuse issues prior to entering into the service that continued during service. The Board thus determined that the OTH characterization remains appropriate in your case because your misconduct was a significant departure from the conduct expected of a service member. While the Board carefully considered the evidence you submitted in mitigation, even in light of the Wilkie Memo and reviewing the record 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,

5/8/2023

