



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

█
Docket No. 2630-23

Ref: Signature Date



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 limitation 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 17 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 this 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). Additionally, the Board also considered an advisory opinion (AO) furnished by qualified mental health provider. Although you were afforded an opportunity to submit an AO rebuttal for consideration, 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.

After an initial period of active service, you were honorably discharged from the U.S. Marine Corps at the completion of your required active service in November 1995. You subsequently enlisted in the U.S. Navy and began a period of active duty service on 16 October 2000. Your

pre-enlistment physical examination, on 16 October 2000, and self-reported medical history both noted no psychiatric or neurologic issues or symptoms. On your pre-enlistment medical history, you specifically denied ever having: (a) nervous trouble of any sort, (b) frequent trouble sleeping, (c) depression or excessive worry, (d) been evaluated/treated for a mental condition, and (e) being consulted or treated by clinics, physicians, healers, or other practitioners within the past 5 years for other than minor illnesses.

On 14 February 2001, you received non-judicial punishment (NJP) for provoking speeches or gestures towards a police officer. You did not appeal your NJP. On 3 June 2003, your command issued you a "Page 13" warning (Page 13) documenting your failure to meet physical readiness test (PRT) standards for failing the PRT on 12 May 2003.

You detached from your shore-based duty station in █ (█) on or about 1 September 2003. Upon reporting to your next duty station in █, you underwent urinalysis testing. On 26 September 2003, a Navy Drug Screening Laboratory message indicated you tested positive for cocaine above the testing cutoff level.

On 29 September 2003, your command notified you that you were being processed for an administrative discharge by reason of misconduct due to drug abuse. You waived your rights to consult with counsel and to request an administrative separation board. In the interim, on 3 October 2003, you received NJP for the wrongful use of a controlled substance (cocaine). You did not appeal your NJP. Ultimately, on 15 October 2003, you were discharged from the Navy for misconduct with an under Other Than Honorable conditions (OTH) characterization of service and assigned an RE-4 reentry 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, your desire for a discharge upgrade and contentions that: (a) post-service, the VA granted you a service-connection for PTSD with a 70% disability rating, (b) along with the physical stress in the USMC, you also had to endure the emotional and mental stress from bullying and hazing and the frequent physical altercations, (c) between your time in the USMC and the Navy you were always drinking and doing cocaine, but you got yourself cleaned up, stopped using drugs and joined the Navy, (d) long hours in Bahrain and raising a son by yourself caused you to relapse into old habits and you resumed drinking and self-medicating, (e) the stress and anxiety increased your consumption of alcohol and drug use and you self-medicated to help deal with stress from previous deployments and combat-related activities, (f) post-service you continued to self-medicate with alcohol and drugs, (g) your service-records reflect that the stress, anxiety, depression, and PTSD is service-connected and due to these recorded connections you could not in good faith perform your duties to the best of your abilities without being medicated, and (h) even under the stress you performed your duties well. For purposes of clemency and equity consideration, the Board considered the evidence you provided in support of your application.

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 28 September 2023. The Ph.D. stated in pertinent part:

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. Unfortunately, none of the VA documents submitted, or his personal statement are 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."

After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. In accordance with the Hagel, Kurta, and Wilkie Memos, the Board gave liberal and special consideration to your record of service and your contentions about any traumatic or stressful events you experienced and their possible adverse impact on your service. However, the Board concluded that there was no convincing evidence of any nexus between any mental health conditions and/or related symptoms and your misconduct, and determined that there was insufficient evidence to support the argument that any such mental health conditions mitigated the misconduct that formed the basis of your discharge. As a result, the Board concluded that your misconduct was not due to mental health-related conditions or symptoms. Moreover, even if the Board assumed that your misconduct was somehow attributable to any mental health conditions, the Board unequivocally concluded that the severity of your misconduct far outweighed any and all mitigation offered by such mental health conditions. The Board determined the record reflected that your 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 not be held accountable for your actions.

The Board did not believe that your record was otherwise so meritorious as to deserve a discharge upgrade. The Board concluded that significant negative aspects of your conduct and/or performance greatly outweighed any positive aspects of your military record. Additionally, the Board determined that illegal drug use is contrary to Navy core values and policy, renders such service members unfit for duty, and poses an unnecessary risk to the safety of their fellow Sailors. The Board determined that characterization under OTH conditions is appropriate when the basis for separation is the commission of an act or acts constituting a significant departure from the conduct expected of a Sailor. As a result, the Board determined that there was no impropriety or inequity in your discharge and concluded that your misconduct and disregard for good order in discipline clearly merited your discharge. 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. 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,

11/21/2023

