



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

■
Docket No. 2674-23
Ref: Signature Date

Dear ■

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 20 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 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 3 October 2023. Although you were afforded an opportunity to submit a rebuttal, you chose not to do so.

You enlisted in the Navy and began a period of active service on 20 September 2001. Your rate was Master of Arms. On 3 May 2003, you were hospitalized after being referred to medical for suicidal ideations and diagnosed with Adjustment Disorder with mixed mood and conduct disturbance resolving. On 17 July 2003, you received your first nonjudicial punishment (NJP) for an unauthorized absence (UA), insubordinate conduct, and failure to obey a lawful order. On 7 August 2003, you received a second NJP for the wrongful use of marijuana. You were subsequently notified of your pending administrative separation processing by reason of pattern of misconduct (POM), commission of a serious offense, and drug abuse, at which time you

waived your right to consult with counsel and to have your case heard before an administrative discharge board. On 4 September 2003, you were evaluated and disclosed you used marijuana in order to obtain a discharge from the Navy, you regularly used cocaine since July 2002, and you desired not to attend treatment. Although you met the criteria for cocaine dependence and were counseled on the Navy's policy concerning illegal drug use and available treatment programs, on 5 September 2003, you refused treatment. Your commanding officer recommended you be discharged with an Other Than Honorable (OTH) characterization of service. On 5 September 2003, you were discharged with an OTH by reason of POM.

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 to upgrade your characterization of service and to change your reentry code to RE-1 or RE-2. You contend that: (1) while filling the role of informant for both NCIS (Naval Criminal Investigative Service) and the █, █ police department, you developed a drug use problem plagued with paranoia and PTSD following your discharge, (2) you have successfully completed many programs for mental health including █ State Mandated Programs, (3) your service record and performance in the Navy is your biggest regret, and (4) if you could do it over, you would serve your country and contribute to the maximum of your ability. For purposes of clemency and equity consideration, the Board noted you did not provide documentation describing post-service accomplishments or advocacy letters.

Based on your assertions that you incurred mental health concerns (PTSD) during military service, which might have mitigated your discharge characterization of service, 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 suffered from PTSD while in military service, or that he exhibited any psychological symptoms or behavioral changes indicative of a diagnosable mental health condition other than an Adjustment Disorder following verbalized suicidal ideation. An Adjustment Disorder is considered a temporary condition that is based on external factors and is expected to resolve within 6 months. He did not submit any medical evidence in support of his claims. 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 conclude, "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 that 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. The Board noted that marijuana use in any form is still against Department of Defense regulations and not permitted for recreational use while serving in the military. Further, given your military profession as a law enforcement specialist whose duties involved providing security and physical protection for service members, the Board found your conduct showed a complete disregard for the military authorities and regulations which you swore to enforce and uphold. Finally, the Board concurred with the AO that there is insufficient evidence of a mental health condition that may be attributed to your military service or misconduct. As explained in the AO, you did not submit any medical evidence in support of your claim and your personal statement is not sufficiently detailed to establish clinical symptoms or provide a nexus with your misconduct. 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 and an RE-4 reentry code. 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 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,

11/28/2023

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Executive Director

Signed by: █