



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

██████████
Docket No. 2890-23

4326-18

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 new 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 contentions 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 6 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 naval record, 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 an advisory opinion (AO) from a qualified mental health professional. Although you were offered an opportunity to respond to the AO, you chose not to do so.

Regarding your request for a personal appearance, the Board determined that a personal appearance with or without counsel will not materially add to their understanding of the issue(s) involved. Therefore, the Board determined that a personal appearance was not necessary and considered your case based on the evidence of record.

After a previous period of service in the Army, you enlisted in the Marine Corps and commenced active duty on 6 January 1982. In September 1982, you were formally counseled, for your failure to pay just debts. On 28 October 1982, you were formally counseled for repeated tardiness, and you entered the drug exemption program agreeing to abstain from further use. In January 1983, you entered a substance use rehabilitation program; however, on 18 February 1983, you failed to attend the program as scheduled. You were counseled on 1 March 1983 regarding the Marine Corps policy concerning illegal drugs.

In April 1983, you received non-judicial punishment (NJP) for disobedience, and you were assigned to the weight control program after failing the physical fitness test. In May 1983, you were counseled regarding your further involvement in illegal drugs, failure to pay debts, and you were warned continued deficiencies may result in administrative separation. In September 1983, you were counseled regarding illegal use of government phones.

On 25 October 1984, you received NJP for wrongful use of a controlled substance (marijuana). In January 1985, you received NJP for unauthorized absence (UA) totaling four days. As a result, you were notified of the initiation of administrative separation proceedings by reason of misconduct due to drug abuse, at which point, you waived your right to consult with counsel and a hearing of your case before an administrative discharge board. Your commanding officer recommended your separation from the Marine Corps with an Other Than Honorable (OTH) character of service. Subsequently, your separation proceedings were determined to be sufficient in law and fact and the separation authority directed your discharge with an OTH character of service by reason of misconduct due to drug abuse. On 15 February 1985, you were so discharged.

You previously applied to this Board for a discharge upgrade. Your request for relief was denied on 5 June 2019.

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 discharge for veterans' benefits and contention that you used marijuana during your active service to manage PTSD and depression.

Based on your assertion that you were suffering from a mental health condition during military service, which might have mitigated the circumstances of your discharge, the Board requested and reviewed an AO provided by a mental health professional. The AO stated in pertinent part:

There is no evidence that he was diagnosed with a mental health condition in military service, or that he exhibited any psychological symptoms or behavioral changes indicative of a diagnosable mental health condition. He has provided no medical evidence in support of his claims. Unfortunately, available records are not sufficiently detailed to establish clinical symptoms in service 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) may aid in rendering an alternate opinion.

The AO concluded, "it is my clinical opinion there is insufficient evidence of a diagnosis of PTSD or another mental health condition that may be attributed to military service. There is insufficient evidence to attribute his misconduct to PTSD or another 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 NJPs and multiple counselings, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact it included drug offenses. 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 considered the likely negative effect your misconduct had on the good order and discipline of your unit. Additionally, the Board concurred with the AO that there is insufficient evidence to attribute the circumstances of your separation to a mental health condition. As explained in the AO, you provided no medical evidence in support of your claims and available records are not sufficiently detailed to establish clinical symptoms in service or provide a nexus with your misconduct. 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. 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,

10/22/2023

