



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

█
Docket No. 3352-23
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 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 4 December 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 20 October 2023. Although you were afforded and 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 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.

During your enlistment processing, you disclosed pre-service marijuana use and were granted an enlistment waiver. You also signed a statement of understanding concerning U.S. Marine Corps

policy on the illegal use of drugs. You enlisted in the Marine Corps and began a period of active service on 22 August 1994. On 15 March 1995 and 15 March 1996, you received Meritorious Masts for your outstanding leadership. On 22 April 1996, you received your first nonjudicial punishment (NJP) for possessing a falsified military identification card and were later counseled concerning your lack of judgment and integrity. You were further advised failure to take corrective action may result in administrative separation or limitation of further service. On 6 March 1997, you submitted a statement admitting to smoking marijuana twice and received a second NJP for the wrongful use of marijuana on 20 March 1997. You were subsequently diagnosed as a drug abuser and notified of your pending administrative processing by reason of misconduct due to drug abuse, at which time you elected your right to consult with counsel and to have your case heard before an administrative discharge board (ADB). An ADB was convened on 25 June 1997, found that you committed misconduct, and recommended you be discharged with an Other Than Honorable (OTH) characterization of service. On 3 September 1997, the separation authority directed you be discharged with an OTH due to Drug Abuse and Pattern of Misconduct. On 10 September 1997, you were so discharged.

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 your contention that you incurred mental health concerns (PTSD) during military service. You further contend that: (1) you were discharged due to admission of marijuana use and you believe your record should reflect Honorable service, (2) you were a member of an air crew who were participating in Operation Purple Star where 14 members died in a mid-air collision incident during an exercise, (3) one of the members who died was your friend who you switched aircrafts with you shortly before the flight took off, (4) the tragic event cause you to have survivor's guilt, (5) you began self-medicating with marijuana, (6) at the time PTSD was not a familiar term and was not spoken of until you consulted with a Department of Veterans Affairs (VA) representative in December 2010, (7) your service was eventually considered Honorable and you were diagnosed with PTSD and tinnitus; both service-connected disabilities, (8) you have earned a bachelors degree, (9) you have been married to a wonderful woman for the past 18 years, (10) you are currently starting a new career by returning to school in order to become an X-ray technologist, (11) you have received counseling and treatment for PTSD, and (12) you have also survived colon cancer causing you to reevaluate your priorities, including the importance of an upgraded discharge. For purposes of clemency and equity consideration, the Board noted you provided copies of your Certificate of Release or Discharge from Active Duty (DD Form 214), Meritorious Masts, VA benefits, medical documents, and a personal statement/cover letter.

Based on your assertions that you incurred mental health concerns 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:

The Petitioner submitted a letter dated 2011 from █ whereby he was diagnosed with PTSD due to an event that involved a helicopter crash in his unit while in service. In 2012, the VA found him 30% service-connected for PTSD. Although there is no evidence contained within his service

record that he and his best friend switched places on a mission, there is a character statement that was submitted from a fellow Marine during his MAST that indicated that it was thought that the Petitioner had been on the helicopter crash that resulted in the entire crew dying. Although there is no evidence that the Petitioner was diagnosed with a mental health condition or suffered from PTSD while in military service, it is plausible that he smoked marijuana to cope with the trauma of having witnessed a helicopter within his Squadron crashing as well as losing his best friend that was reportedly on the downed aircraft. However, falsifying a military ID is not a behavior that is typically observed as a result of PTSD.

The AO conclude, “it is my considered clinical opinion there is sufficient evidence of a post-service diagnosis of PTSD that may be attributed to military service. There is insufficient evidence that all of his misconduct could be attributed to PTSD.”

After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined 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, the Board agreed with the AO that falsifying a military ID card is not behavior that is typically observed as a result of PTSD and there is insufficient evidence to attribute all of your misconduct to PTSD. Finally, the Board noted that VA eligibility determinations for health care, disability compensation, and other VA-administered benefits are for internal VA purposes only. Such VA eligibility determinations, disability ratings, and/or discharge classifications are not binding on the Department of the Navy and have no bearing on previous active duty service discharge characterizations. 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, _____

12/13/2023

[REDACTED]

Executive Director

Signed by: [REDACTED]