



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

██████████
Docket No. 3802-23
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.

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 5 January 2024. 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). The Board also considered the advisory opinion (AO) furnished by a qualified mental health professional. Although you were afforded an opportunity to submit an AO 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.

You enlisted in the Navy and commenced active duty on 18 April 2000. Prior to serving, on 11 April 2000, as part of your Report of Medical History, you admitted to prior use of marijuana. You were hospitalized, 8 - 12 September 2001, for a psychological evaluation following a report of suicidal ideations and ingestion of marijuana and cocaine. Between 13 and 15 October 2001,

you were absent from your place of duty without authorization and, on 17 October 2001, you received non-judicial punishment (NJP) for this unauthorized absence (UA). Additionally, you were issued an administrative remarks counseling concerning deficiencies in your performance and/or conduct. You were advised that any further deficiencies in your performance and/or conduct may result in disciplinary action and in processing for administrative discharge. On 6 November 2001, you signed a Military Suspect's Acknowledgment & Waiver of Rights, and made a voluntary statement, admitting to use of cocaine. On 10 November 2001, you received NJP for wrongful use of marijuana and cocaine and, on 14 November 2001, you were notified of Administrative Discharge for pattern of misconduct and drug abuse. Ultimately, on 3 February 2002, you were discharged with an Other Than Honorable (OTH) characterization of service, with separation code HKK (drug abuse), and reentry code of RE-4.

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 Memo. These included, but were not limited to, your desire to change your discharge characterization of service and your contentions that: (1) you were discharged because of misconduct due to drug abuse; however, you were having mental health issues that began shortly after enlisting, (2) your medical records describe anxiety and depression as well as PTSD throughout, (3) you continue to have mental health problems and have difficulty organizing and following through, and (4) you rely on others to assist you. For purposes of clemency and equity consideration, the Board considered your statement and the Department of Veterans Affairs (VA) and medical documentation you provided, but noted you did not provide supporting documentation describing post-service accomplishments or advocacy letters.

As part of the Board's review process, a qualified mental health professional reviewed your contentions and the available records and issued an AO dated 13 November 2023. The AO noted in pertinent part:

The Petitioner submitted temporally remote post-service records from █ where he was seen from June 2020-February 2023 for mental health treatment. He was diagnosed with Major Depressive Disorder, PTSD Unspecified, Other Psychoactive Substance Abuse, and Opioid Dependence. The Petitioner was appropriately referred and evaluated by active duty Mental Health staff. In 2000, his diagnosis of Adjustment Disorder would have been accurate, given his recent symptoms following external stressors. His record indicates that he had a rather extensive history of polysubstance abuse prior to his overdose attempt, thus it is difficult to establish a nexus between his mental health diagnoses and misconduct. 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 concluded, "it is my considered clinical opinion there is sufficient 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 your 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 it involved 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 also considered the likely negative impact your repeated misconduct had on the good order and discipline of your command. Finally, the Board noted that you were given the opportunity to address your conduct issues, but you continued to commit misconduct. Additionally, the Board concurred with the AO and determined that, although there is sufficient evidence of a mental health condition that may be attributed to military service, there is insufficient evidence to attribute your misconduct to a mental health condition. As the AO noted, your record indicates you had a rather extensive history of polysubstance abuse prior to your overdose attempt, thus it is difficult to establish a nexus between your mental health diagnoses and misconduct. The Board agreed with the AO that additional records linking your diagnoses and symptoms to your misconduct may aid in rendering an alternate opinion.

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 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,

1/18/2024

