



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

■
Docket No. 4026-23
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 3 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 began a period of active duty on 22 May 1985. On 9 January 1986, you received non-judicial punishment (NJP) for unauthorized absence (UA), a period totaling 21 days. On 1 May 1991, you received a second NJP for wrongful use of cocaine. Consequently,

you were notified that you were being recommended for administrative discharge from the Navy by reason of misconduct due to drug abuse. You elected your procedural right to consult with military counsel and to present your case to an administrative discharge board (ADB). On 8 May 1991, you were evaluated and diagnosed with cocaine and cannabis dependence and recommended for Level III inpatient treatment. On 7 June 1991, an ADB was convened, and determined that the preponderance of the evidence supported a finding that you committed misconduct and, by a majority vote, recommended that you be separated from the Navy with a General (Under Honorable Conditions) (GEN) characterization of service. The separation authority approved the recommendation for administrative discharge and directed your GEN discharge from the Navy by reason of misconduct due to drug abuse. On 26 July 1991, 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 change your discharge character of service to Honorable and contentions that: (1) your mental health issues started in your childhood due to prolonged exposure to traumatic incidents and was exacerbated by the trauma you witnessed onboard the █ during your service, (2) you are currently permanently and totally disabled due to your service-connected mental health diagnosis, and (3) you have been in therapy for your condition for many years and will be on medication for the rest of your life. For purposes of clemency and equity consideration, the Board noted you provided a personal statement and decision documents from the Department of Veterans Affairs but no documentation describing post-service accomplishments or advocacy letters.

As part of the Board's review, a qualified mental health professional reviewed your request and provided the Board with an AO on 14 November 2023. The AO noted in pertinent part:

There is no evidence that he was diagnosed with a mental health condition in military service, other than substance use disorder. Post-service, the VA has granted service connection for PTSD. It is possible that some of his misconduct, such as UA, could be attributed to avoidance behavior associated with PTSD. However, there is insufficient evidence to attribute his substance use to PTSD, given preservice substance use that appears to have continued in service. Additional records (e.g., post-service mental health records describing the Petitioner's diagnosis, symptoms, and their specific link to his misconduct) may contribute to an alternate opinion.

The AO concluded, "it is my clinical opinion there is post-service evidence from the VA of a diagnosis of PTSD that may be attributed to military service. There is insufficient evidence to attribute all of his misconduct to PTSD."

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 considered the likely negative effect your misconduct had on the good order and discipline of your command. Further, the Board concurred with the AO that while there is post-service evidence from the VA of a diagnosis of PTSD that may be attributed to military service, there is insufficient evidence to attribute all of your misconduct to PTSD. As the AO explained, there is insufficient evidence to attribute your substance use to PTSD, given your pre-service substance use that appears to have continued in service. Additionally, there is no evidence that you were diagnosed with a mental health condition in military service, other than your substance use disorder. Therefore, the Board determined that the evidence of record did not demonstrate that you were not mentally responsible for your conduct or that you should otherwise not be held accountable for your actions. 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 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,

1/22/2024

