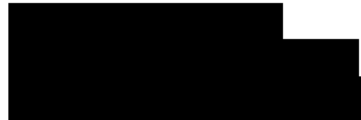




DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
701 S. COURTHOUSE ROAD, SUITE 1001
ARLINGTON, VA 22204-2490

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Docket No. 4301-23

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 limitations 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 13 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 this Board. Documentary material considered by the Board consisted of your application together with all material submitted in support thereof, relevant portions of your service 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)/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). The Board also considered an advisory opinion (AO) from a qualified mental health professional and your response dated 31 October 2023.

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 United States Marine Corps and commenced a period of service on 8 August 1995. You acknowledged that you suffered from alcohol and substance use disorders prior to entering the military. On 28 October 1998, you were found guilty at Summary Court Martial (SCM) of violating Uniform Code of Military Justice (UCMJ) 112(a), for wrongful use of marijuana, and Article 86, for seven specifications of unauthorized absence (UA) from chiropractic

appointments and from your place of duty. You were awarded reduction in rank to E-1, confinement for 30 days, and forfeitures of pay.

On 9 December 1998, you were notified that you were being processed for an administrative discharge by reason of misconduct – drug abuse. You waived your right to consult with qualified counsel and your right to present your case at an administrative separation board. During your separation physical, on 30 November 1998, you denied any mental health concerns or symptoms and responded “I am in good health.” On 6 January 1999, you were discharged from the Marine Corps with an Other Than Honorable (OTH) characterization of service and assigned an RE- 4B reentry code.

The Board carefully considered all potentially mitigating and/or extenuating 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: (a) your desire to upgrade your characterization of service, (b) your contention that you were suffering from undiagnosed mental health issues during your service, which caused your alcohol and substance abuse, (c) the impact that your mental health had on your conduct, and (4) your assertion that alcoholism is a disease and should be a mitigating factor when reviewing your misconduct. For purposes of clemency and equity consideration, the Board noted that you provided documentation related to your post-service accomplishments and five character letters, including information about your sustained sobriety.

In your request for relief, you contend that you suffered from mental health concerns during military service, which drove you to abuse alcohol and drugs. You explain that you were hoping that joining the Marine Corps would put you on the right track, but that you could not maintain sobriety at that time. As part of the Board review process, the BCNR Physician Advisor who is a licensed clinical psychologist (Ph.D.), reviewed your contentions and the available records and issued an AO dated 29 September 2023. The Ph.D. noted in pertinent part:

There is no evidence that she was diagnosed with a mental health condition in military service, or that she exhibited any psychological symptoms or behavioral changes indicative of a diagnosable mental health condition. She has provided no medical evidence in support of her claims, although she has provided lay evidence of sustained sobriety following treatment for alcohol and substance use disorders. Unfortunately, her personal statement is not sufficiently detailed to establish the presence of a mental health condition incurred or exacerbated by service. Additional records (e.g., post-service mental health records describing the Petitioner’s diagnosis, symptoms, and their specific link to her misconduct) may aid in rendering an alternate opinion.

The Ph.D. concluded, “it is my clinical opinion there is insufficient evidence of a mental health condition that may be attributed to military service. There is insufficient evidence to attribute her misconduct to a mental health condition.”

You responded on 31 October 2023, arguing that while alcoholism is not a compensable disability, many consider alcohol to be a gateway drug that leads to other substance abuse. This substance abuse was the basis of your OTH discharge. Alcoholism is a chronic brain disorder and should be considered a mitigating factor when determining relief.

After thorough review, the Board concluded the potentially mitigating factors were insufficient to warrant relief. In accordance with the Kurta, Hagel, and Wilkie Memos, the Board gave liberal and special consideration to your record of service, and your contentions about undiagnosed mental health issues and the possible adverse impact on your service. Specifically, the Board felt that your misconduct, as evidenced by your SCM conviction, outweighed these mitigating factors. The Board considered the seriousness of your misconduct and the fact that it involved a drug offense and multiple periods of UA. Further, the Board also considered the likely negative impact your conduct had on the good order and discipline of your command. The Board determined that substance abuse is contrary to Marine Corps values and policy, renders such Marine unfit for duty, and poses an unnecessary risk to the safety of fellow service members.

In making this determination, the Board concurred with the advisory opinion that there was no convincing evidence that you suffered from any type of mental health condition while on active duty, or that any such mental health condition was related to or mitigated the misconduct that formed the basis of your discharge. Your in-service misconduct appears to be consistent with your substance abuse disorder, rather than evidence of another mental health condition incurred in or exacerbated by military service. You did not provide any post-service medical documents in support of your mental health contentions and your request fails to draw sufficient nexus to the underlying misconduct. The Board also highlighted that your in-service behavior is just a continuation of your pre-service misconduct. As a result, the Board concluded that your misconduct was not due to mental health-related symptoms, rather, due to your sustained substance abuse. The Board determined the record clearly reflected that your active duty misconduct was intentional and willful and demonstrated you were unfit for further service. The Board also 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. The Board concluded that your conduct constituted a significant departure from that expected of a Marine and continues to warrant an OTH characterization.

Therefore, while the Board carefully considered the evidence you submitted in mitigation and commends you for your post-discharge accomplishments and sobriety, 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,

11/19/2023

