



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. 4486-23
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 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 2 February 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)/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, dated 28 November 2023. Although you were provided an opportunity to comment on the AO, you chose not to do so.

After a period of Honorable service, you reenlisted and commenced a second period of active duty with the Marine Corps on 10 November 1982. On 12 December of 1982, you were formerly counseled on your absence from appointed place of duty. On 13 July 1983, you were formerly counseled on being late to work. In December 1983, you tested positive for marijuana. Subsequently, you were notified of pending administrative separation action by reason of misconduct due to drug abuse. After electing to make a written statement, your commanding officer (CO) forwarded your package to the separation authority (SA) recommending your discharge by reason of misconduct due

to drug abuse with an Other Than Honorable (OTH) characterization of service. The SA approved the CO's recommendation and, on 20 March 1984, you were so discharged.

You previously applied to this Board for a discharge upgrade but were denied on 6 September 2012. The Board determined the mitigation evidence you submitted in support of your request was insufficient to offset the seriousness of your misconduct. In addition, your request for reconsideration was denied without a hearing on 8 January 2015 based on lack of new evidence.

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 and contentions that you incurred PTSD during military service due to witnessing your brother's death, which contributed to your separation from the Marine Corps, never tested positive for drugs, never received NJP, never received help from your command, and your supervisor picked you up from the morgue. For purposes of clemency and equity consideration, the Board noted you provided a post-service diagnosis from the Department of Veterans Affairs but no supporting 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. The mental health professional stated in pertinent part:

Petitioner submitted a temporally remote summary of diagnoses from the VA dated April 2023. Among the diagnoses are Alcohol Dependence, Marijuana Dependence, Cocaine Dependence, PTSD, and Major Depressive Disorder. The Petitioner contends that he suffered from PTSD following an automobile accident that resulted in his brother dying on scene. He further stated that his Gunnery Sergeant was the one who came to pick him up from the morgue. Unfortunately, there is no evidence of this event contained within his service record. Furthermore, there is no evidence that the Petitioner was diagnosed with a mental health condition or suffered from PTSD while in military service, or that he exhibited any psychological symptoms or behavioral changes indicative of a diagnosable mental health condition. He submitted evidence of post-service diagnoses obtained from the VA, however the etiology or rationale for the diagnoses was not provided. 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 insufficient 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 these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined your misconduct, as evidenced by your counselings and positive urinalysis, outweighed the potential mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact it involved a drug

related 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 illegal drug 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 concurred with the AO that there is insufficient evidence your misconduct could be attributed PTSD. As explained in the AO, you submitted evidence of post-service diagnoses obtained from the VA, however the etiology or rationale for the diagnoses was not provided. Further, your personal statement is not sufficiently detailed to establish clinical symptoms or provide a nexus with your misconduct. Finally, the Board noted that there is no evidence in your record, and you submitted none, to substantiate your contentions. 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 provided 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,

2/14/2024

