



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. 4791-23
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 12 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, 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 the advisory opinion (AO) furnished by a qualified mental health professional. Although you were provided an opportunity to respond to the AO, 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 6 October 1986. Prior to commencing active duty, on 14 June 1986, you admitted to prior to service use of marijuana and cocaine. In October 1986, you were counseled on, and acknowledged by your signature, the Navy Policy on

Drug and Alcohol Abuse. On 24 July 1987, you received non-judicial punishment (NJP) for unauthorized absence (UA). On 3 September 1987, you again received NJP, this time for wrongful use of marijuana. Additionally, on 5 January 1988, you were counseled concerning deficiencies in your performance and/or conduct. However, on 3 August 1988, you again received NJP, on this occasion for UA and incapacitation for the performance of your duties. Following this, you commenced two periods of UA, between 17 and 19 August 1988, and 25 August through 1 September 1988. On 4 November 1988, you were convicted at Special Court-Martial (SPCM) of four incidents of UA, and possession and use of marijuana. You were sentenced to confinement for four months, forfeiture of \$425.00 per month for four months, and a Bad Conduct Discharge (BCD). On 1 September 1989, you were discharged with a BCD.

The Board carefully considered all potentially mitigating factors to determine whether the interests of justice warrant relief in your case in accordance with the Hagel, Kurta, and Wilkie Memos. These included, but were not limited to, your desire to change your discharge characterization of service and your contentions that you were attached to the ██████████ ██████████ in 1987 during the ██████████” at the ██████████ Shipyard, a crane lowering a crate carrying several civilians and toolboxes had an accident – all of the civilians died after falling approximately 12 stories onto the ship’s deck, you were put on “clean up” crew and have struggled from the incident, you started drinking more and using cannabis to cope, and because the military culture was so heavily involved with drinking, and you were young, you felt you had to participate, or else you would be hazed and harassed. Additionally, the Board noted you checked the “Other Mental Health” box on your application but chose not to respond to the 9 June 2023 letter from the Board requesting evidence in support of your claim. For purposes of clemency and equity consideration, the Board noted you did not provide 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 22 November 2023, which was previously provided to you. The AO noted in pertinent part:

During military service, he was properly evaluated and diagnosed with substance use disorder. There is no evidence that he was diagnosed with another mental health condition in military service, or that he exhibited any psychological symptoms or behavioral changes indicative of another mental health condition. He has submitted no medical evidence in support of his claims. Unfortunately, available records are not sufficiently detailed to establish clinical symptoms in service or provide a nexus with his misconduct, which appears to be pre-service behavior that 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 aid in rendering an alternate opinion.

The AO 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 his misconduct to a mental health condition, other than substance use disorder.”

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 and SPCM, 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 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. 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, which ultimately led to your court-martial conviction.

Additionally, the Board concurred with the AO and determined that during military service you were properly evaluated and diagnosed with a substance abuse disorder. The Board also concurred with the AO that there is no evidence that you were diagnosed with another mental health condition in military service, or that you exhibited any psychological symptoms or behavioral changes indicative of another mental health condition. The Board agreed that the available records are not sufficiently detailed to establish clinical symptoms in service or provide a nexus with your misconduct, which appears to be pre-service behavior that continued in service.

As a result, the Board concluded your conduct constituted a significant departure from that expected of a service member and continues to warrant a BCD. Even in light of the Hagel, Kurta, 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. 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,

1/23/2024

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