



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. 4803-23

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 18 December 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, which was considered favorable to your case.

You enlisted in the United States Navy and commenced a period of service on 1 August 1996. In October 2002, you began experiencing mental health issues and received medical treatment for related symptoms throughout the course of your time in service. On 10 June 2004, the Physical Evaluation Board (PEB) found you 30% disabled due to "Major Depressive Disorder with Psychotic Features." The PEB concluded that your condition rendered you unfit for duty and medical retirement processing was directed.

However, on 28 October 2004, you were found guilty at non-judicial punishment (NJP) of violating Uniform Code of Military Justice Article 112(a), for wrongful use of

Amphetamine/Methamphetamine. You did not appeal this NJP. On 9 November 2004, you were notified that you were being processed for an administrative discharge by reason of misconduct due to drug abuse. You elected your right to consult with qualified counsel and your right to present your case at an administrative separation (ADSEP) board. On 10 March 2005, by a vote of 3 to 0, the ADSEP Board found that the basis for drug abuse was met, and recommended your separation with an Other Than Honorable (OTH) characterization of service. On 1 June 2005, you were discharged from the Navy due to your misconduct with an OTH and assigned an RE- 4 reentry code.

You previously submitted an application to the Naval Discharge Review Board (NDRB) and were granted partial relief on 10 March 2020. Specifically, NDRB upgraded your OTH characterization of service to a General (Under Honorable Conditions) (GEN) characterization based on liberal consideration. The NDRB elected not to upgrade your characterization to Honorable (HON) because they did not feel that your PTSD or other mental health issues rose to a level as to completely absolve you of the misconduct.

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, change your narrative reason for separation, and change your reentry code, (b) your contention that you were suffering from mental health symptoms during your time in service, (c) the impact that your mental health had on your conduct, and (d) your assertion that treatment was not working which resulted in your self-medication with drugs. For purposes of clemency and equity consideration, the Board noted that you provided documentation related to your post-service accomplishments and character letters.

In your request for relief, you contend that you incurred mental health issues and PTSD during service, which mitigate the circumstances of your separation. You explain that you were suffering from nightmares and hallucinations, and had two job-related traumatic events occur while diving which almost claimed your life. You assert that treatment was not helping, so you turned to drugs in an effort to self-medicate. 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 8 December 2023. The Ph.D. noted in pertinent part:

The Petitioner submitted four character references from a prior petition. He also submitted numerous active duty and post-service psychiatric records. Santa Rosa Memorial Hospital note that he presented in July 29, 2006 with depression and homicidal and paranoid ideation. He was admitted on an inpatient basis from December 13-18 2006 and diagnosed with Bipolar Affective Disorder, Major Depressive Disorder and PTSD. It is noted, "3rd acute inpatient admission for 29- year-old...His delusions and ideation of paranoid content started, he said, in the Navy when he interpreted people picking fights with him, a needle in his coffee cup, his car being keyed, doctors conspiring after his magnetic resonance imaging for degenerative disc disease and that they were not interpreting correctly, and other events that led the patient to believe that there was a

government agency directed a plot dedicated to killing him...There were two traumatic events while he was in the service involving him nearly losing his life when he was working underwater in a wet suit and helmet. On both occasions, his helmet was filling with water and he had to let go of a heavy plate that he was carrying in order to survive, and on the other occasion a propeller wash from a large, towed boat created turbulence and he was swept from an area where he was working. Since then, the patient has had numerous flashbacks, difficulty sleeping, and great fearfulness when required to don diving equipment or work under water when he was still in the Navy.” During the admission, he had also endorsed auditory hallucinations and paranoid delusions. He was treated at the █ VA Community Based Outpatient Clinic (CBOC) from 2009 – 2015 where it was noted that he was treated for PTSD and chronic psychosis, chronic derogatory voices. In 2012, he “appeared somewhat manic. Speech was somewhat pressured, some tangentiality, flight of ideas...admitted to continued AH [auditory hallucinations].” He was diagnosed with Schizoaffective Disorder in 2013. The VA found him to be 100% service-connected for Schizoaffective Disorder with psychotic paranoid delusions and mild sleep disturbance. He was diagnosed by the Santa Rosa CBOC in 2015 with Paranoid Schizophrenia. There is evidence that the Petitioner began experiencing mental health symptoms in service as early as 2002. His symptoms progressively worsened and his diagnoses progressively became more serious. It is plausible that his misconduct was mitigated by his mental health conditions.

The Ph.D. concluded, “it is my considered clinical opinion there is sufficient evidence of a mental health condition that existed during military service. There is sufficient evidence that his misconduct could be attributed to a mental health condition.”

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 NJP, outweighed these mitigating factors. The Board considered the seriousness of your misconduct and the fact that it involved drug abuse. Further, the Board also considered the negative impact that your conduct had on the good order and discipline of your command. The Board determined that illegal substance abuse is contrary to the Navy core values and policy, renders such Sailor unfit for duty, and poses an unnecessary risk to the safety of fellow shipmates.

In making this determination, the Board concurred with the advisory opinion that there was sufficient evidence that you suffered from mental health conditions while on active duty. However, after applying liberal consideration, the Board agreed with assessment made by NDRB and concluded that while your misconduct may have been motivated by your mental health condition, such condition does not excuse your actions or completely absolve you of your misconduct. The Board reviewed and considered the clemency information that you provided. While the Board commends your post-service accomplishments, they felt that you already received the correct level of relief from the NDRB. The Board agreed with the NDRB that your

conduct did seem to be an anomaly based on the circumstances, and that your case warranted an upgrade from OTH to GEN, but that a further upgrade to Honorable or other changes to your record are not warranted. The Board determined that GEN characterization is appropriate when significant negative aspects of a Sailor's conduct outweighs the positive aspects, which remains accurate in your case.

Additionally, the Board did not find an injustice with your narrative reason for separation, separation code, or reentry code. The Board concluded that you were assigned the correct separation information based on the totality of the circumstances, and that such entries were proper and in compliance with all Department of the Navy and Marine Corps directives and policy at the time of your discharge.

Therefore, 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 determined the relief provided by the NDRB adequately addressed any injustice with your record. 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,

1/10/2024

