



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. 4819-23
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 15 March 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). Additionally, the Board also considered an advisory opinion (AO) furnished by qualified mental health provider. Although you were afforded an opportunity to submit an AO rebuttal for consideration, you chose not to do so.

You enlisted in the U.S. Navy and began a period of active duty service on 29 May 1981. Your pre-enlistment physical examination, on 27 May 1981, and self-reported medical history both noted no psychiatric or neurologic issues or symptoms. You disclosed a pre-service conviction for marijuana possession in July 1980, as well as drug use on your enlistment application. On 11 September 1981, you reported for duty on board the █ in █.

On 27 August 1981, you received non-judicial punishment (NJP) for failing to obey a lawful order/regulation by possessing drug paraphernalia (e.g., a pipe) containing a controlled substance. You did not appeal your NJP. On the same day, your command issued you a “Page 13” retention warning (Page 13). The Page 13 advised you that any further misconduct may result not only in disciplinary action but in processing for administrative discharge.

On 16 November 1981, you commenced a period of unauthorized absence (UA). While in a UA status, you missed the movement of your ship on 18 December 1981. Your UA terminated after on 28 December 1981. On 19 January 1982, you commenced another UA. On 20 February 1982, your command declared you to be a deserter. Your second UA terminated on 23 February 1982.

On 21 July 1982, you received NJP for three (3) separate specifications of failing to obey an order or regulation, one of which specifically involved marijuana possession. On the same day, your command issued you two (2) separate Page 13 warnings. The first Page 13 warned you that any further misconduct may result not only in disciplinary action but in processing for administrative discharge by reason of his frequent involvement of a discreditable nature with military/civilian authorities. The second Page 13 warned you that any further misconduct as a result of drug abuse may result not only in disciplinary action but in processing for administrative discharge.

On 29 July 1982, your command notified you that you were being processed for an administrative discharge by reason of misconduct due to drug abuse. You waived your rights to consult with counsel, submit statements, and to request an administrative separation board.

In the interim, on 2 August 1982, your drug/alcohol evaluation indicated you were not drug dependent and that no rehabilitation treatment was required. On 25 August 1982, your separation physical examination and self-reported medical history both noted no psychiatric or neurologic issues or symptoms. On 22 September 1982, you received NJP for marijuana possession, failing to obey an order/regulation, and UA. You did not appeal your NJP.

On 10 February 1983, your command issued you a “Page 13” counseling entry where you acknowledged that you were not eligible for reenlistment due to drug abuse. Ultimately, on 10 February 1983, you were discharged from the Navy for misconduct due to drug abuse with an under Other Than Honorable conditions (OTH) characterization of service and assigned an RE-4 reentry code.

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 for a discharge upgrade and contentions that: (a) you suffered from PTSD due to Grenada and Beirut, and (b) you were never offered treatment. 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 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 7 January 2024. The Ph.D. stated in pertinent part:

There is no evidence that the Petitioner was diagnosed with a mental health condition while in military service, or that he exhibited any psychological symptoms or behavioral changes indicative of a diagnosable mental health condition. He did not submit any medical evidence in support of his claim. 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 Ph.D. 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. In accordance with the Hagel, Kurta, and Wilkie Memos, the Board gave liberal and special consideration to your record of service and your contentions about any traumatic or stressful events you experienced and their possible adverse impact on your service. However, the Board concluded 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. As a result, the Board concluded that your misconduct was not due to mental health-related conditions or symptoms. Moreover, even if the Board assumed that your misconduct was somehow attributable to any mental health conditions, the Board concluded that the severity of your cumulative misconduct far outweighed any and all mitigation offered by such mental health conditions. The Board determined the record reflected that your 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 not be held accountable for your actions.

The Board noted that your discharge from the Navy was in February 1983. The Board thus was not persuaded by your arguments that suffered from PTSD due, in part, to either military action in ██████████ or ██████████. The Board noted that U.S. military action in ██████████, and the bombing of the barracks in ██████████ both occurred within a few days of each other in late October 1983, many months after your discharge.

The Board did not believe that your record was otherwise so meritorious as to deserve a discharge upgrade. The Board concluded that significant negative aspects of your conduct and/or performance greatly outweighed any positive aspects of your military record. Additionally, the Board determined that illegal drug possession is contrary to Navy core values and policy. The Board noted that marijuana possession or use in any form is still against Department of Defense regulations, and its recreational use is not permitted while serving in the military. The Board determined that characterization under OTH conditions is appropriate when

the basis for separation is the commission of an act or acts constituting a significant departure from the conduct expected of a Sailor. As a result, the Board determined that there was no impropriety or inequity in your discharge and concluded that your misconduct and disregard for good order in discipline clearly merited your discharge. 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. 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,

3/19/2024

