



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. 4883-23
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) (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 6 December 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 Navy on 7 March 1983. On 29 October 1984, you received non-judicial punishment (NJP) for unauthorized absence (UA). On 14 February 1985, you received NJP for wrongful use of cocaine. On 30 July 1987, a special court-martial (SPCM) convicted you of wrongful use of methamphetamine and six specifications of wrongfully uttering worthless checks. You were sentenced to confinement of 45 days, reduction to E-1, and a Bad Conduct Discharge (BCD). After the BCD was approved at all levels of review, on 7 July 1988, you were so discharged.

Post-discharge, you applied to the Naval Discharge Review Board (NDRB) for a discharge upgrade. On 23 December 1996, the NDRB denied your request after determining that your discharge was proper as issued.

You previously applied to this Board for a discharge upgrade but were denied on 7 September 2006. 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, on 9 February 2016, 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 contention that you incurred PTSD/mental health concerns, which might have mitigated the circumstances that led to your BCD, your BCD was unjust due to the lack of competence demonstrated by your attorney, and your depression and PTSD contributed to your drug addiction. For purposes of clemency and equity consideration, the Board noted you provided a letter from a Department of Veterans Affairs provider 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 on 6 December 2023. The AO stated in pertinent part:

Petitioner submitted a letter from a Nurse Practitioner of the VA ██████████ Healthcare system dated March 2023 that indicates that the Petitioner had been diagnosed with Major Depressive Disorder, Generalized Anxiety Disorder, Panic Disorder and PTSD. 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 other than adjustment disorder symptoms thought to be situationally induced. He submitted evidence of temporally remote post-service diagnoses obtained by 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 NJPs and SPCM, outweighed the potential mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact it involved drug related offenses. 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. The Board also concurred with the AO that there is insufficient evidence your misconduct could be attributed PTSD or a mental health condition. 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 contention of ineffective assistance of counsel. The Board considered that your SPCM underwent appellate review without any finding of error related to your claim. 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. 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

