



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. 5168-23
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 26 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 the 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 the advisory opinion (AO) furnished by a qualified mental health professional.

On 14 December 2023, the Board sent you a letter affording you 30 days to rebut the AO, after which time your case would be decided on the evidence of record as soon as the docket permitted. Unfortunately, your response was not received until 24 January 2024, beyond the 30 days allowed and after your case was docketed. Therefore, the Board did not have the opportunity to consider the rebuttal materials submitted.

You enlisted in the Navy and commenced active duty on 13 March 2000. On 27 July 2001, you were identified as having a positive urinalysis result for marijuana, for which you received non-

judicial punishment (NJP) on 15 August 2001. Subsequently, you were notified of pending administrative separation processing with an Other Than Honorable (OTH) discharge by reason of misconduct due to drug abuse. You waived your rights to consult with legal counsel, submit a statement, or request an administrative discharge board (ADB). On 23 August 2001, your Commanding Officer (CO) recommended you be separated with an OTH, stating your wrongful use of a controlled substance rendered you unfit for further naval service. You were so discharged on 4 November 2001.

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 change your discharge characterization of service, your separation code, and your narrative reason. You contend that you were exposed to trauma while in the Navy, as a civilian you witnesses more than one mass shooting, you are in need of care and treatment for your trauma from the highly specialized psychiatrists and counselors of the VA, and justice requires you receive these services. For purposes of clemency and equity consideration, the Board considered your personal statement and the legal and medical supporting documents you provided.

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 13 December 2023, which, as stated above, was previously provided to you. The AO noted in pertinent part:

The Petitioner submitted a letter from Silver State Health dated February 4, 2021, which indicated that he had been diagnosed with substance, or medication induced depressive disorder, intermittent explosive disorder, substance induced anxiety disorder, cannabis use, alcohol abuse, other psychoactive substance dependency, uncomplicated, opioid dependence, and PTSD that are temporally remote to service. 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. Neither the letter from ██████████ nor his personal statement are 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 your potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your NJP, 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 misconduct had on the good order and discipline of your command.

Additionally, the Board concurred with the AO and determined that there is no evidence that you were diagnosed with a mental health condition or suffered from PTSD while in military service or that you exhibited any psychological symptoms or behavioral changes indicative of a diagnosable mental health condition. The Board agreed that neither the letter from Silver State Health nor your personal statement are sufficiently detailed to establish clinical symptoms or provide a nexus with your misconduct. Further, the Board determined that the evidence of record did not demonstrate that you were not mentally responsible for your conduct or that you should otherwise not be held accountable for your actions. Finally, absent a material error or injustice, the Board declined to summarily upgrade a discharge solely for the purpose of facilitating veterans' benefits, or enhancing educational or employment opportunities.

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 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 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,

2/13/2024

